

IMPLEMENTATION OF THE PRETRIAL SERVICES ACT OF 1982

HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
SECOND SESSION
ON
IMPLEMENTATION OF THE PRETRIAL SERVICES ACT OF 1982

MARCH 6, 1984

Serial No. 150



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

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IMPLEMENTATION OF THE PRETRIAL SERVICES ACT OF 1982

TUESDAY, MARCH 6, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME,
Washington, DC.

The subcommittee met at 10 a.m. in room 2226 of the Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes (presiding), Sawyer, and Sensenbrenner.

Staff present: Hayden Gregory, chief counsel; Virginia Sloan, assistant counsel; Charlene Vanlier, associate counsel.

Mr. HUGHES. The Subcommittee on Crime will come to order.

This morning marks another in a series of hearings that the subcommittee will hold on oversight of the provision of pretrial services in the Federal judicial system. The Pretrial Services Act of 1982 was one of the main projects of this subcommittee in the 97th Congress, and our interest in seeing the mandate of the act carried out is very, very strong.

During the last 18 months, the courts have, pursuant to the direction of the act, been evaluating their ability to provide pretrial services within the probation offices, using existing resources and personnel. The presumption of the act, of course, is that if existing resources and personnel are sufficient to properly and fully provide pretrial services, then the probation offices are the proper vehicle for doing so.

However, the act also clearly provides, in my judgment, that if existing resources and personnel are not sufficient, the judicial district must become a so-called special district outside of the probation office. It is only in these circumstances that the district will receive additional money to provide pretrial services.

This hearing, then, is to evaluate the results of the 18-month trial period, or test period, and to determine whether the mandate of the act is being carried out.

Today we are pleased to welcome to the subcommittee our good friend, the Honorable Gerald B. Tjoflat, judge of the U.S. Court of Appeals for the 11th Circuit and Chairman of the Judicial Conference's Committee on the Administration of the Probation System, and William Foley, Director of the Administrative Office of the U.S. Courts.

Accompanying Judge Tjoflat and Mr. Foley are James Macklin, Mr. Foley's executive assistant, William Nichols, general counsel of the Administrative Office, Donald Chamlee, Chief of the Probation Division, and Guy Willetts, Chief of the Pretrial Services Branch.

All of these gentlemen have appeared before the subcommittee formally and informally on a number of occasions, and we welcome you back today. We have received a copy of your written statement which, without objection, will be made a part of the hearing record. You may proceed as you see fit.

Judge, we have your statement. You may proceed. Welcome.

[The complete statement follows:]

STATEMENT
OF
HONORABLE GERALD B. TJOFLAT
CHAIRMAN
OF THE
COMMITTEE ON THE ADMINISTRATION OF
THE PROBATION SYSTEM
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
AND
MR. WILLIAM E. FOLEY
DIRECTOR
ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
IMPLEMENTATION OF THE PRETRIAL
SERVICES ACT OF 1982
(PUBLIC LAW 97-267)

MARCH 6, 1984

Mr. Chairman, we are Gerald B. Tjoflat, Judge of the U.S. Court of Appeals for the Eleventh Circuit and Chairman of the Judicial Conference's Committee on the Administration of the Probation System, and William E. Foley, Director of the Administrative Office of the U.S. Courts. Accompanying us today is Mr. Foley's Executive Assistant Director, James E. Macklin, Jr. We also have available to answer questions you may have the following officials of the Administrative Office: Mr. William M. Nichols, General Counsel; Mr. Donald L. Chamlee, Chief of the Probation Division; and Mr. Guy Willetts, Chief of the Pretrial Services Branch.

We are pleased to appear before you today on the implementation of the Pretrial Services Act of 1982 (Public Law 97-267). The Administrative Office just recently filed a report on the implementation of the program with the Senate Committee on Appropriations, as requested by that Committee. Rather than restate what is already in that report we have incorporated the report into the prepared statement.

We believe that the pretrial services program will substantially enhance the administration of justice when it is implemented. During the current transition period most courts have performed pretrial services functions through their

probation offices, using existing staff. While some courts are performing extensive pretrial services activity, others have not been able to do so on an extensive basis.

The district courts and the circuit councils will soon make their determinations as to the organizational structure they deem most appropriate for pretrial services in the individual districts. Nationally, the Federal Probation Service is understaffed and cannot absorb significant pretrial services activity on a continuing basis. We are concerned that the benefits of the pretrial services program cannot be achieved if adequate resources are not provided.

Just recently we mailed assessment reports to the individual courts. The reports reflect our best judgments on staffing and organization for the operation of pretrial services in each district based on the limited information available to us. Twelve complete sets of the reports have been furnished to your staff for the Committee's use. The Congress left the actual determinations to the sound discretion of the individual courts which are in the best position to assess their local situations. Once the courts have reviewed our assessments of the amount of work to be done in each district and informed us of their initial determinations as to additional staffing needs and forms of organization, we will be able to begin the allocation of the positions available to us and get on with the business of actually providing pretrial services.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
REPORT ON THE IMPLEMENTATION OF PRETRIAL SERVICES
IN THE FEDERAL COURTS
February 10, 1984

Introduction

The Senate Committee on Appropriations requested the Administrative Office of the United States Courts ("Administrative Office") to report on the implementation of the pretrial services program in the federal courts.

The Committee has also approved 200 of the requested 313 additional positions for the Pretrial Services program. However, the Committee shares the concern of the House that the Probation Service absorb as much of this function as possible within current staffing levels. Accordingly, the Committee directs the Administrative Office of the U.S. Courts to report by February 1, 1984, on the implementation of the expanded Pretrial Services program, with emphasis on the coordination of activities between it and the Probation Service. (Senate Report No. 98-206, at 69)

The pretrial services program has now been initiated in most courts. The Administrative Office believes that this program will substantially enhance the administration of justice when it is implemented. During the current transition period most courts have performed pretrial services functions through their probation offices, using existing staff. While some courts are performing extensive pretrial services activity, others have not been able to do so.

The district courts and the circuit councils will soon make their determinations as to the organizational structure most appropriate for pretrial services in the individual judicial districts. Nationally, the Federal Probation Service is understaffed and cannot absorb significant pretrial services activity on a continuing basis. We are concerned that the benefits of the pretrial services program cannot be achieved if adequate resources are not provided.

Pretrial Services

The Pretrial Services Act of 1982 (Public Law 97-267, September 27, 1982) requires the Director of the Administrative Office of the United States Courts to provide for the establishment of pretrial services in all judicial districts other than the District of Columbia. The objectives of pretrial services are to reduce the number of new crimes committed by persons released on bail, reduce the number of defendants who fail to appear for trial, reduce the number of defendants unnecessarily confined, increase the use of non-financial terms or conditions of release, and reduce the cost of unnecessary detention.

As set forth in section 3154 of title 18 of the United States Code, pretrial services functions include the following:

- (1) Collecting, verifying, and reporting to the presiding judicial officer information on all individuals charged with a criminal offense (other than a petty offense) prior to the initial appearance, to assist in the setting of bail and conditions of release;
- (2) Reviewing and modifying such bail reports and recommendations, where appropriate;
- (3) Supervising persons released when designated by the court;
- (4) Operating or contracting for facilities for the custody and care of persons released, including temporary residence, treatment for alcohol and drug abuse, and counseling services;
- (5) Informing the court and the United States attorney of all apparent violations of pretrial release conditions by defendants and of any danger that a defendant may pose to another person or the community;
- (6) Serving as coordinator for local agencies which may serve as custodians for released defendants;
- (7) Assisting persons released in securing employment and medical, legal or social services;
- (8) Preparing pretrial detention reports in cooperation with the United States marshal and the United States attorney;
- (9) Collecting information, monitoring and evaluating bail activities, and preparing periodic reports to improve the release process; and

- (10) Providing reports to the United States attorney for pretrial diversion purposes and supervising persons diverted under an agreement with the United States attorney.

Form of Pretrial Services Organizations

Pretrial services were authorized on a pilot basis in 10 demonstration districts under title II of the Speedy Trial Act of 1974. That pilot program, in which 5 districts performed the services under independent offices and 5 were organized as part of district court probation offices, led to the Pretrial Services Act of 1982. Under the 1982 Act pretrial services are to be performed through district court probation offices or by contract. A district court, with the approval of the judicial council of the circuit, may determine that the services in that district should be provided under a separate pretrial services office.

The 1982 Act does not authorize the Administrative Office or the Judicial Conference of the United States to play a direct role in the decision to establish a separate pretrial services office. The Act, however, created an 18-month transition period during which pretrial services would continue under existing arrangements in the 10 demonstration districts and would be provided through district court probation offices -- using their existing staffs -- in the remaining 82 districts.* After the transition period ends on March 27, 1984 the district courts have the option of establishing a separate pretrial services office.

The 18-month delay period was designed to give the district courts, the circuit councils, and the Administrative Office sufficient time to evaluate the nature and volume of the pretrial services workload in each judicial district and the additional personnel and other resources needed, if any, in each district to perform such services.

Establishment of Pretrial Services

Following passage of the Pretrial Services Act in September 1982, the Administrative Office began to provide for pretrial services in the districts that had not participated in the demonstration program under the Speedy Trial Act. Copies of the statute and a memorandum explaining the major aspects of the legislation were sent to all chief judges of the courts of appeals, district judges and magistrates, clerks of court, chief

* The districts of Guam and the Northern Mariana Islands are treated administratively as a single unit. The Act does not apply to the District of Columbia

probation officers, chief pretrial services officers, public defenders, and other court personnel who would be involved in implementing the Act.

Shortly thereafter, each chief probation officer was invited to one of five regional training meetings at which the provisions of the Act and the procedures required for its implementation were explained. Following these meetings for the chiefs, on-site pretrial services training was conducted by the Administrative Office and experienced field personnel for probation officers in each of the non-demonstration districts, beginning in November 1982 and concluding in September 1983. Some United States magistrates, United States attorneys, clerks of court, and law enforcement personnel attended these two-day training sessions. A pretrial services operations manual, confidentiality regulations, and a set of standard forms were distributed to each probation office.

By June 30, 1983, pretrial services had been started in 61 of the 82 non-demonstration judicial districts. During the 12-month period ended June 30, 1983,* pretrial services interviews were conducted on 14,852 defendants nationally -- 9,541 in the ten demonstration districts and 5,311 in the non-demonstration districts. During that period 5,962 defendants were released by judicial officers at initial appearances to the supervision of pretrial services officers or probation officers -- 4,071 in the demonstration districts and 1,891 in other districts. Attached Table 1 sets forth the pretrial services activity in each district during the 12-month period ended June 30, 1983.

Assessment Process

From July to December 1983 the Probation Division of the Administrative Office conducted on-site assessment studies in each judicial district to determine: (1) the actual and projected volume of bail activity; (2) the number of locations at which bail is set; (3) local summons and arrest policies; (4) detention rates; (5) failure to appear rates; (6) numbers of persons released to pretrial supervision; and (7) defendant characteristics. The assessment teams also reviewed the bail investigations conducted by probation officers and pretrial services officers in each district and the prebail reports and recommendations submitted to judicial officers. Attached Table 2,

* The Pretrial Services Act became law on September 27, 1982, three months after the start of the 12-month reporting period. The 10 demonstration districts performed pretrial services duties throughout the year, and a few other districts started to implement the program before the effective date of the Act. Most of the districts, however, initiated their pretrial services programs between October 1982 and June 1983.

prepared from on-site assessments made by the Probation Division, reflects the number of defendants appearing for bail purposes between the time each district started providing pretrial services and the time of its assessment. It also reflects the number of defendants investigated, the number of prebail investigations, and the number of bail recommendations submitted in each district during the assessment period. Because the time periods applicable to these figures may vary from district to district, it is not feasible to project the data from this table into annual workload estimates or to compare the workloads of individual districts.

The information collected during the on-site assessments shows that pretrial services have now been initiated to some degree in the great majority of the non-demonstration districts. In 19 of the non-demonstration districts pretrial investigations were conducted on at least 90 percent of all eligible defendants making initial appearances. The following tables show the degree to which the probation offices were able to assume pretrial services duties during the assessment periods.

<u>Percent of Eligible Defendants Investigated</u>	<u>Number of Districts</u>
Over 90%	19
50%-89%	20
20%-49%	16
1%-19%	9
None	13
Percentage not available	5

<u>Percent of Eligible Defendants on which a Prebail Report was filed with the court</u>	<u>Number of Districts</u>
Over 90%	6
50% to 89%	26
20%-49%	16
1%-19%	13
None	17
Percentage not available	4

Table 2 shows that some probation offices have performed extensive pretrial services during the transition period using existing staff resources. What the table does not show, however, is either the quantity or the quality of the probation offices' performance of the full range of pretrial services duties or their probation and parole duties. Officers in several of the districts have stated that their performance of pretrial services duties during the transition period has been achieved at the expense of other operations and cannot continue without additional staff resources.

Staffing Requirements

In 1981 a work measurement study of probation offices was conducted by the Administrative Office. As a part of that study, the measurement team evaluated the staffing needs to perform pretrial services in four districts then providing those services. A basic staffing factor was established of one employee (including both professional and clerical) for each 110 defendants interviewed. Applying that factor to the number of criminal defendants projected to appear in the United States district courts in fiscal year 1985 (excluding traffic and escape cases) 473 positions will be needed to perform pretrial services duties during the 1985 fiscal year, as shown in the following table:

	<u>Workload Volume</u>	<u>Factor</u>	<u>Personnel Needed</u>
Criminal defendants	45,700	110.00	= 415
Management & support	415	7.09	= <u>58</u>
Total			473

For the fiscal year 1984, application of the formula reflects a need for 439 positions.

There are 126 positions already allocated to the 10 demonstration districts. The budget request for pretrial services for the fiscal year 1984 was for an additional 313 positions (both officers and clerical support personnel), to be available after March 27, 1984. Both the House and Senate Appropriations Committees approved 200 of the additional 313 positions requested. The 326 positions currently authorized are 147 fewer than the number needed for the fiscal year 1985.

A new work measurement study of pretrial services functions will be undertaken later this year in order to refine further the staffing factors for future appropriations requests.

Availability of Existing Probation Staff

The appropriations request by the Judiciary did not identify the additional positions for pretrial services with either the district's probation offices or separate pretrial services offices because individual district courts and circuit councils have not yet made their statutory determinations concerning the appropriate form of organization for each district. Each of the Appropriations Committees has urged the absorption of as much of the pretrial services function as is reasonably possible within the current staff levels of the Federal Probation Service.

Nationally, the Federal Probation System is understaffed. The workload of the system has been increasing, and pretrial services functions cannot be absorbed generally without additional resources. An additional 330 positions have been requested for the fiscal year 1985 (224 officers and 106 clerks) to perform general probation and parole duties, exclusive of pretrial services functions.

The work measurement study of probation offices was completed in June 1981 and established staffing factors based on the number of offenders supervised; the level of supervision required (high activity vs. low activity); the number of presentence, postsentence, collateral, and violation reports completed; and the number of drug aftercare clients receiving services. In addition, the staffing ratio considers the requirements for clerical support, management support, and miles traveled while on official business. The following table sets forth the staffing ratios for each of these functions and applies it to the probation caseload for the fiscal years 1981 through 1985.

Work Group	Staffing Ratio	Actual			Estimates	
		1981	1982	1983*	1984	1985
1. Clients Under Supervision		58,494	59,009	60,180	64,000	68,000
a. High Activity Cases	41:1	**	**	23,016	23,700	25,200
b. Low Activity Cases	90:1	**	**	37,164	40,300	42,800
2. Pre and Post-Sentence Reports	97:1	26,749	29,057	31,608	33,000	35,000
3. Collateral Reports	357:1	19,036	21,939	23,135	27,000	29,500
4. Violation Reports	212:1	12,592	12,086	12,437	13,200	13,600
5. Drug Aftercare Clients	112:1	4,279	4,592	4,735	5,000	5,300
6. Management and Support	7.09:1	.....	.....	.....	.....	.....
7. Travel Mileage	60,000:1	**	**	7,377,217	7,229,003	7,229,003
8. Clerical Functions	1.66:1	.....	.....	.....	.....	.....
TOTAL POSITIONS NEEDED		2,703	2,703	2,808	2,871	3,201
Probation Officers		1,627	1,627	1,697	1,734	1,958
Clerks		1,036	1,036	1,071	1,097	1,203
Probation Officer Assistants		40	40	40	40	40

* Actual As of June 30.

** Data not available.

Although the Federal Probation System is understaffed, there are some individual districts which are in fact overstaffed at this time and could absorb the work of pretrial services, at least for the short term. Those probation offices which are overstaffed, however, will continue to be reduced by attrition, based on the probation workload staffing formula.

Recommendations as to Form of Organization

The statutory 18-month transition period ends on March 27, 1984. Until that time pretrial services, other than in the demonstration districts, must be performed by the district court probation offices. After that date individual district courts may, with the approval of their circuit councils, establish independent pretrial services offices. The statute thus provides a date on which the courts may begin to exercise their discretion as to the form of organization for pretrial services. The courts' discretion to determine the form of organization is a continuing grant of authority which may be exercised at any time thereafter.

The Probation Committee of the Judicial Conference has reviewed the assessment reports and recommendations of the Administrative Office and has recommended which type of organization appears to be most appropriate for each district. In the absence of extensive experience in the actual performance of pretrial services functions in most districts (other than the demonstration districts), the recommendations were formulated after examining the following:

- A. The number of staff positions needed for each district to perform pretrial services, is derived from two primary factors:
 1. Actual and projected volume of criminal prosecutions and the nature of the offenses charged; and
 2. The actual and projected numbers of individual defendants charged and the variety of individual defendant characteristics within the district.
- B. These primary factors must be carefully assessed to project the volume of workload activity anticipated in each of the major pretrial services functions as follows:
 1. Bail investigations conducted. This is a measure of the work performed during the 18-month delay period.
 2. Prebail reports and recommendations. This is a measure of the effectiveness in reaching defendants prior to the bail hearing.
 3. Summons and arrest policy. This impacts on how many defendants will have to be interviewed in custody on a priority basis. Summons cases can be scheduled to avoid peaks and valleys in the workload.

4. Number of persons released to pretrial supervision. This is also related to the staff required since a higher proportion of supervision for persons released from custody requires more officers.
 5. Detention rates. This affects how much work there is in follow-up bail hearings, interviews, and related activity.
 6. Failure to appear rates. This is an indicator of potential problems in the bail-setting process in a district.
- C. Finally, the number of separate locations at which bail is set and the volume of activity at each location will influence how widely dispersed the available staff will be.

The dispersal of available staff among the different locations within a district, as well as the total number of staff needed to perform pretrial services functions, will shape the ultimate decision as to the appropriate form of organization. The fewer the locations at which bail is set, the more feasible it is to concentrate staff in an office separate from the probation office and still have sufficient personnel to provide backup coverage during periods of staff leave and illness.

Each district was reviewed individually, taking into consideration the above factors. The Committee saw no reason to recommend a change in organizational structure for the demonstration districts. Generally, the Committee followed a guideline of recommending to other districts the establishment of separate pretrial services offices where four or more officers would be located at a single place of setting bail. Where the caseload of a district would justify a total staff of four or fewer positions -- or the caseload is geographically dispersed -- the feasibility of establishing a separate organization for pretrial services functions is very questionable.

The recommendations and accompanying assessment reports will be sent to the district courts and circuit councils in February 1984. Table 3 sets forth the recommendations for each district. The table reflects three types of recommendations: (1) those districts in which pretrial services are best organized within the probation office because of modest caseload and/or geographic factors, (2) those in which a separate office is the best way to provide pretrial services, and (3) those districts ("intermediate") in which the advantages of one form of organization do not prevail over the other.

It is not expected that each district will be provided with the number of staff derived from the work measurement formula to perform all pretrial services functions. For the fiscal year

1984 the number of staff required under the formula is 439. Funds have been authorized by the Congress, however, for only 326 positions. Therefore, most districts can expect to be provided with fewer staff than reflected in Table 3.

In addition, each court will be asked to conduct an independent assessment of its current and future personnel needs and to specify the extent to which pretrial services functions can be absorbed by existing probation office staff. Some courts may conclude, after a review of all relevant factors, that their probation offices can absorb some pretrial services functions and will request fewer staff to perform pretrial services than called for under the work measurement formula. Probation offices and pretrial services offices will not be given more staff than the individual courts request.

Table 4 is a district by district list of the personnel actually assigned to each probation office as of December 15, 1983, the staff needed in probation offices to perform general probation and parole duties, the number of personnel by which each district is currently over or under the work measurement formula, and the number of personnel needed to provide pretrial services.

Authorization of Resources

The attached opinion by the General Counsel of the Administrative Office addresses the question of the allocation of additional personnel to district courts that elect to provide pretrial services through their probation offices. The opinion concludes that the Director is charged by statute to provide for the delivery of pretrial services system-wide, but the choice as to the mode of delivery of such services is left explicitly by statute to the individual district courts, with the concurrence of the judicial council where the choice of the court is for a separate office. While the Pretrial Services Act of 1982 itself gives the court and councils unfettered discretion to choose the appropriate form of organization for pretrial services, the legislative history expresses the Congressional intent that additional personnel be provided only in those districts where pretrial services are delivered through a separate office.

The Director must comply with his statutory duty under 18 U.S.C. § 3152(a) to provide for the establishment of pretrial services in each federal judicial district. If courts exercise their statutory option of having pretrial services performed by their probation offices, and if existing staff resources in those offices are inadequate to discharge that responsibility, the Director must ask the Congress for additional personnel for probation offices, despite the thrust of the legislative history of the 1982 statute.

The Administrative Office plans to allocate positions to the districts as the pretrial workload requires, whether the courts choose separate pretrial services organizations or not. This is the only appropriate course that the Director may follow under the existing statute. If the current statute were interpreted to prohibit the assignment of personnel to probation offices, the Director would have an unresolvable dilemma. He is mandated to provide pretrial services in all districts, yet he would have no authority to provide resources for those districts which exercise their clear statutory option of providing pretrial services through their probation office. Without necessary resources the performance of either pretrial services or probation functions (or both) will suffer, frustrating the fundamental objectives of each of those systems.

Future Plans to Implement the Act

Responsibility for implementing the Act is shared by the Director, the district courts, and the circuit councils. The Administrative Office will continue to provide guidelines through the issuance of manuals, instructions, and recommended procedures to probation offices, pretrial services offices, and to United States magistrates. Working with the Federal Judicial Center, training will be provided to facilitate implementation of the provisions of the Act and to increase the efficiency and quality of pretrial services in each court.

The Act requires annual reports on pretrial services activities, and a new statistical reporting system has been developed to support that requirement. Periodic reviews of pretrial services and probation work in the courts will be made by the Division of Probation and the Office of Management Review, and recommendations for improvements will be made to the courts.

With the implementation of pretrial services on a nationwide basis, the Administrative Office plans to conduct a new and more thorough work measurement study during calendar year 1984 to determine future staffing levels needed to perform pretrial services functions. Implementation of the Act will continue under the oversight of the Probation Committee, acting on behalf of the Judicial Conference of the United States.

Table 1
Defendants Interviewed by Pretrial Services
During the Twelve Month Period Ended June 30, 1983

Circuit and District	Total Defendants Interviewed	Type of Pretrial Services Interview			Type of Initial Bail Set						Released to PSA Supervision at Initial Bail Hearing
		Pre-Bail	Post-Bail	Refused/Other	Non-Money Bail		Money Bail			Bail Not Set at Initial Hearing	
					Personal Recognition	Un-Secured Bond	Ten Percent	Burety Bond	Collateral Bond		
Total.....	14,852	13,339	1,952	661	2,812	4,780	681	2,321	650	827	2,962
1st Cir.....	342	324	14	4	66	89	44	135	19	9	146
ME.....	-	-	-	-	-	-	-	-	-	-	-
MA.....	165	160	11	4	31	52	39	44	1	8	94
NH.....	-	-	-	-	-	-	-	-	-	-	-
RJ.....	8	3	-	-	-	-	3	-	-	-	-
PA.....	174	171	3	-	45	17	3	91	18	1	82
2nd Cir.....	2,305	2,065	97	43	718	844	147	968	113	16	683
CT.....	36	32	2	1	-	2	2	30	-	1	4
NY, N.....	-	-	-	-	-	-	-	-	-	-	-
NY, E.....	1,864	972	51	21	818	243	23	274	92	7	91
NY, W.....	1,325	1,070	44	11	400	300	111	275	21	8	288
NY, S.....	-	-	-	-	-	-	-	-	-	-	-
VT.....	-	-	-	-	-	-	-	-	-	-	-
3rd Cir.....	842	635	185	22	60	211	148	105	-	17	309
DE.....	3	-	3	-	-	-	-	3	-	-	-
NJ.....	52	48	3	1	32	-	-	21	-	-	8
PA, E.....	830	375	144	11	38	282	143	60	-	18	284
PA, M.....	-	-	-	-	-	-	-	-	-	-	-
PA, W.....	86	14	36	6	-	28	8	31	-	1	19
VI.....	-	-	-	-	-	-	-	-	-	-	-
4th Cir.....	1,274	1,010	129	125	682	118	36	279	20	61	613
MD.....	878	781	189	88	678	84	22	263	17	22	295
NC, E.....	-	-	-	-	-	-	-	-	-	-	-
NC, M.....	188	125	2	21	74	51	12	25	-	26	188
NC, W.....	-	-	-	-	-	-	-	-	-	-	-
SC.....	96	76	13	8	1	13	3	77	-	3	36
VA, E.....	2	-	2	-	-	-	-	2	-	-	-
VA, W.....	11	8	6	3	-	2	-	8	3	1	3
WV, N.....	7	-	-	7	6	-	-	1	-	-	7
WV, S.....	13	13	-	3	3	8	-	8	-	-	3
5th Cir.....	1,192	1,000	88	17	261	201	26	610	121	84	707
LA, E.....	325	325	-	-	2	106	4	22	77	24	35
LA, M.....	47	58	6	-	-	18	2	26	-	1	49
LA, W.....	12	13	2	-	6	-	-	7	-	-	3
MS, N.....	44	17	26	7	-	24	-	13	-	2	27
MS, S.....	-	-	-	-	-	-	-	-	-	-	-
TX, N.....	634	636	18	8	261	44	21	281	-	11	812
TX, E.....	19	18	4	-	6	8	2	4	-	1	8
TX, S.....	-	-	-	-	-	-	-	-	-	-	-
TX, W.....	178	129	26	4	28	2	26	52	44	13	97
6th Cir.....	1,292	1,421	294	261	182	1,228	160	205	98	60	1,273
KY, E.....	34	7	7	-	-	2	-	12	-	-	8
KY, W.....	224	124	88	23	2	99	29	77	1	25	51
MI, E.....	1,272	821	84	67	18	828	82	79	23	2	827
MI, W.....	164	157	8	3	38	186	8	29	-	4	125
OH, N.....	201	196	8	29	1	181	18	88	1	6	18
OH, S.....	216	72	25	27	97	2	7	43	2	2	28
TN, E.....	31	-	26	1	8	-	1	8	-	3	8
TN, W.....	19	6	12	1	4	-	4	8	-	2	12
TX, W.....	2	-	-	6	-	-	-	-	2	-	-

Table 1
Defendants Interviewed by Pretrial Services
During the Twelve Month Period Ended June 30, 1963
(continued)

Circuit and District	Total Defendants Interviewed	Type of Pretrial Services Interview			Type of Initial Bail Set						Released to PSA Supervision at Initial Bail Hearing
		Pre-Bail	Post-Bail	Refused/Other	Non-Money Bail		Money Bail			Bail Not Set at Initial Hearing	
					Personal Recognizance	Un-Secured Bond	Ten Percent	Surety Bond	Collateral Bond		
7th Cr.	1,235	989	812	83	83	735	162	283	9	9	495
IL, W ^o	1,001	813	456	34	4	882	103	209	2	8	349
IL, C.	-	-	-	-	-	-	-	-	-	-	-
IL, S.	120	89	32	9	9	45	23	49	1	-	114
IN, N.	42	29	23	-	12	8	16	3	-	1	21
IN, S.	-	-	-	-	-	-	-	-	-	-	-
WI, E.	84	42	11	5	22	-	7	19	-	-	9
WI, W.	7	6	1	-	3	-	1	3	-	-	3
8th Cr.	854	712	122	12	215	129	27	257	19	69	223
AR, E.	121	75	44	-	78	6	-	36	3	7	101
AR, W.	18	12	3	-	2	7	2	6	-	-	4
IA, N.	24	23	1	-	18	2	-	4	-	-	2
IA, S.	26	24	10	2	21	-	2	14	-	-	9
MO, E.	268	193	12	3	99	-	14	82	-	14	8
MO, W ^o	20	-	30	-	-	10	1	3	13	3	14
MO, W ^o	238	228	11	1	92	102	18	85	-	41	184
NE, E.	-	-	-	-	-	-	-	-	-	-	-
ND.	40	36	4	-	7	22	-	17	3	1	12
SD.	42	32	14	6	-	21	2	17	-	3	9
9th Cr.	2,590	2,221	218	61	248	603	41	1,472	72	184	2,087
AK. E.	39	30	7	2	12	1	-	20	3	2	28
AZ.	574	495	78	9	124	28	14	344	-	84	76
CA, N.	-	-	-	-	-	-	-	-	-	-	-
E.	183	211	84	6	16	18	18	77	27	8	10
LA, C.	1,601	1,290	122	29	6	841	-	978	6	72	922
CA, S.	-	-	-	-	-	-	-	-	-	-	-
HI.	1	-	1	-	-	-	-	-	-	-	-
ND.	93	26	7	-	34	18	4	25	-	8	25
MT.	-	-	-	-	-	-	-	-	-	-	-
NY.	-	-	-	-	-	-	-	-	-	-	-
OR.	40	22	9	-	10	1	6	4	12	6	8
WA, E.	7	3	3	2	1	3	-	3	1	-	2
WA, W.	72	66	4	2	25	7	-	11	14	8	25
GU.	-	-	-	-	-	-	-	-	-	-	-
FM.	-	-	-	-	-	-	-	-	-	-	-
10th Cr.	881	765	87	29	244	186	27	227	121	87	340
CO.	248	197	18	38	9	93	14	2	88	43	73
KS.	72	64	15	1	12	19	-	22	19	7	12
NM.	109	179	18	1	47	12	2	128	1	-	72
OK, W.	89	90	3	-	-	68	9	21	16	-	8
OK, E.	79	72	3	-	21	-	9	8	1	3	6
OK, W.	88	87	-	1	24	19	5	21	15	3	68
UT.	-	-	-	-	-	-	-	-	-	-	-
WY.	26	22	4	-	-	6	2	18	-	1	11
11th Cr.	2,018	1,791	227	81	81	889	28	1,212	26	71	877
AL, W.	187	162	1	3	2	187	4	18	4	6	9
AL, M.	22	22	6	1	1	15	1	15	-	-	1
AL, S.	20	22	8	3	6	8	-	14	-	1	5
FL, N.	19	18	-	1	6	3	4	9	-	-	-
FL, M.	129	122	24	2	29	29	9	84	19	8	23
FL, S.	1,222	1,006	148	81	21	222	12	881	9	88	209
GA, W ^o	284	281	88	-	9	186	2	186	-	8	229
GA, M.	8	8	-	-	3	-	-	-	-	-	-
GA, S.	-	-	-	-	-	-	-	-	-	-	-

original pretrial services demonstration district.

TABLE 2
ASSESSMENT PERIOD DATA

CIRCUIT AND DISTRICT	DEFENDANTS MAKING INITIAL APPEARANCE	INVESTIGATIONS CONDUCTED	PREDAIL REPORTS SUBMITTED	RECOMMENDATIONS SUBMITTED
FIRST CIRCUIT				
MAINE	60	12 .20	12 .20	12 1.00
MASSACHUSETTS	250	168 .67	151 .60	122 .81
NEW HAMPSHIRE	83	0 .00	0 .00	0 .00
RHODE ISLAND	52	3 .06	3 .06	3 1.00
PUERTO RICO	343	240 .70	240 .70	240 1.00
SECOND CIRCUIT				
CONNECTICUT	90	25 .28	10 .11	9 .90
NEW YORK, N.Y.	88	0 .00	0 .00	0 .00
D-NEW YORK, E. (11)	1346	1312 .97	1222 .91	1160 .95
P-NEW YORK, S. (17)	1321	1151 .87	1094 .83	1004 .92
NEW YORK, N.Y.	88	0 .00	0 .00	0 .00
VERMONT	10	9 .90	6 .60	6 1.00
THIRD CIRCUIT				
DELAWARE	40	7 .18	3 .08	3 1.00
NEW JERSEY	472	141 .30	130 .28	125 .96
D-PENNSYLVANIA, E. (5)	808	576 .71	397 .49	375 .94
PENNSYLVANIA, N.Y.	171	4 .02	4 .02	3 .75
PENNSYLVANIA, W.	180	70 .39	20 .11	14 .70
VIRGIN ISLANDS	135	128 .95	67 .50	0 .00
FOURTH CIRCUIT				
D-MARYLAND (14)	1518	966 .64	772 .51	770 1.00
NORTH CAROLINA, E.	88	0 .00	0 .00	0 .00
NORTH CAROLINA, N.Y.	216	216 1.00	1128 .52	1108 .98
NORTH CAROLINA, W.	88	0 .00	0 .00	0 .00
SOUTH CAROLINA	387	89 .23	76 .20	41 .54
VIRGINIA, E.	88	1 .00	1 .00	1 1.00
VIRGINIA, W.	78	9 .12	5 .06	5 1.00
WEST VIRGINIA, N.Y.	88	0 .00	0 .00	0 .00
WEST VIRGINIA, S.	107	10 .09	8 .07	8 1.00
FIFTH CIRCUIT				
LOUISIANA, E.	390	359 .92	359 .92	359 1.00
LOUISIANA, N.Y.	99	99 1.00	83 .84	83 1.00
LOUISIANA, W.	58	39 .67	39 .67	39 1.00
MISSISSIPPI, N.Y.	57	57 1.00	41 .72	21 .31
MISSISSIPPI, S.	88	0 .00	0 .00	0 .00

TABLE 2
ASSESSMENT PERIOD DATA

CITIZEN AND DISTRICT	DEFENDANTS MAKING INITIAL APPEARANCE		INVESTIGATIONS CONDUCTED		PREBAIL REPORTS SUBMITTED		RECOMMENDATIONS SUBMITTED	
P-TEXAS-N. (7)	735		734	.97	717	.95	7108	.99
TEXAS-E.	50		19	.38	16	.32	14	.88
TEXAS-S.	88		0	.00	0	.00	0	.00
TEXAS-W.	378		259	.69	221	.58	218	.99
SIXTH CIRCUIT								
KENTUCKY-E.	144		15	.10	0	.00	0	.00
KENTUCKY-W.	278		213	.77	122	.44	0	.00
MICHIGAN-E. (18)	1003		953	.95	909	.91	9048	.99
MICHIGAN-W.	218		217	1.00	206	.94	206	1.00
OHIO-N.	179		178	.99	152	.85	152	1.00
OHIO-S.	163		122	.75	76	.47	63	.83
TENNESSEE-E.	88		0	.00	0	.00	0	.00
TENNESSEE-N.	138		8	.06	3	.02	1	.33
TENNESSEE-W.	83		4	.00	0	.00	0	.00
SEVENTH CIRCUIT								
P-ILLINOIS-N. (7)	1049		1049	1.00	501	.48	313	.62
ILLINOIS-C.	88		0	.00	0	.00	0	.00
ILLINOIS-S.	159		122	.77	109	.69	109	1.00
INDIANA-N.	33		33	1.00	29	.88	29	1.00
INDIANA-S.	58		57	.98	46	.79	40	.87
WISCONSIN-E.	139		128	.92	115	.83	114	.99
WISCONSIN-W.	75		23	.31	12	.16	0	.00
EIGHTH CIRCUIT								
ARKANSAS-E.	248		121	.49	75	.30	19	.25
ARKANSAS-W.	68		34	.50	31	.46	31	1.00
IOWA-N.	65		62	.95	61	.94	61	1.00
IOWA-S.	55		52	.95	29	.53	26	.90
MINNESOTA	258		255	.99	241	.93	217	.90
MISSOURI-E.	100		81	.81	2	.02	2	1.00
MISSOURI-W. (6)	330		330	1.00	321	.97	321	1.00
NEBRASKA	40		26	.65	25	.63	22	.88
NORTH DAKOTA	66		31	.47	28	.42	28	1.00
SOUTH DAKOTA	188		51	.27	51	.27	45	.88
NINTH CIRCUIT								
ALASKA	121		47	.39	45	.37	45	1.00
ARIZONA	487		465	.95	3998	.82	3938	.98
CALIFORNIA-N.	88		36	.00	7	.00	7	1.00
CALIFORNIA-E.	325		227	.70	187	.58	186	.99

TABLE 2
ASSESSMENT PERIOD DATA

CIRCUIT AND DISTRICT	DEFENDANTS MAKING INITIAL APPEARANCE	INVESTIGATIONS CONDUCTED	PREBAIL REPORTS SUBMITTED	RECOMMENDATIONS SUBMITTED
P-CALIFORNIA, C. (18)	1831	1811 .99	16158 .88	14908 .92
CALIFORNIA, S.	88	161 .00	125 .00	73 .58
MAJITI	1	0 .00	0 .00	0 .00
IRAND	120	100 .83	94 .78	94 1.00
MONTANA	19	11 .58	0 .00	0 .00
NEVADA	88	0 .00	0 .00	0 .00
OREGON	91	42 .46	33 .36	33 1.00
WASHINGTON, S.	88	12 .14	6 .07	6 1.00
WASHINGTON, W.	87	73 .84	69 .79	66 .96
GUAM, NO. MARSHALL ISLANDS	22	9 .41	4 .18	4 1.00
TENTH CIRCUIT				
COLORADO	174	168 .97	138 .79	125 .91
KANSAS	190	132 .69	103 .54	98 .95
NEW MEXICO	169	120 .71	120 .71	120 1.00
OKLAHOMA, N.	154	150 .97	150 .97	150 1.00
OKLAHOMA, E.	127	104 .82	104 .82	104 1.00
OKLAHOMA, W.	443	91 .21	91 .21	91 1.00
UTAH	18	0 .00	0 .00	0 .00
WYOMING	35	12 .34	10 .29	10 1.00
ELEVENTH CIRCUIT				
ALABAMA, N.	129	127 .98	126 .98	114 .90
ALABAMA, S.	84	34 .40	28 .33	26 .93
ALABAMA, W.	33	27 .82	22 .67	22 1.00
FLORIDA, N.	18	31 .00	26 .00	11 .42
FLORIDA, S.	213	183 .86	0 .00	0 .00
E-FLORIDA, S.	2782	1384 .50	10488 .38	10238 .98
P-GEORGIA, N. (3)	562	286 .51	231 .41	231 1.00
GEORGIA, N.	32	30 .94	26 .81	26 1.00
GEORGIA, S.	198	35 .18	1 .01	1 1.00

B - DEMONSTRATION DISTRICT - INDEPENDENT
P - DEMONSTRATION DISTRICT - PROBATION
E - EMERGENCY PRETRIAL OFFICE
S - DATA EXTR. OBTAINED FROM SAMPLE
W - DATA NOT AVAILABLE
() - CURRENT PRETRIAL SERVICES STAFF

RECOMMENDATION OF THE PROBATION COMMITTEE
AS TO FORM OF PRETRIAL SERVICES ORGANIZATION

TABLE 3

<u>DISTRICT</u>	<u>STAFF</u> ¹	<u>LOCATIONS</u> ²	<u>RECOMMENDATION</u>
ALABAMA MIDDLE	2	1	PROBATION
ALABAMA NORTHERN	5	2	INTERMEDIATE
ALABAMA SOUTHERN	2	1	PROBATION
ALASKA	2	1	PROBATION
ARIZONA	8	2+	INTERMEDIATE
ARKANSAS EASTERN	3	1	PROBATION
ARKANSAS WESTERN	1	1+	PROBATION
CALIFORNIA CENTRAL	16	1+	SEPARATE-SPECIAL REC. ³
CALIFORNIA EASTERN	7	2+	INTERMEDIATE
CALIFORNIA NORTHERN	9	1+	SEPARATE OFFICE
CALIFORNIA SOUTHERN	15	2	SEPARATE OFFICE
COLORADO	4	1	PROBATION
CONNECTICUT	3	2	PROBATION
DELAWARE	1	1	PROBATION
FLORIDA MIDDLE	7	3	INTERMEDIATE
FLORIDA NORTHERN	2	1+	PROBATION
FLORIDA SOUTHERN	23	2+	SEPARATE OFFICE
GEORGIA MIDDLE	2	1+	PROBATION
GEORGIA NORTHERN	6	1	SEPARATE-SPECIAL REC. ³
GEORGIA SOUTHERN	3	3	PROBATION
GUAM & N. MARIANA	1	1+	PROBATION
HAWAII	3	1+	PROBATION
IDAHO	1	1	PROBATION
ILLINOIS CENTRAL	3	1+	PROBATION
ILLINOIS NORTHERN	11	1	SEPARATE-SPECIAL REC. ³
ILLINOIS SOUTHERN	2	1	PROBATION
INDIANA NORTHERN	2	1	PROBATION
INDIANA SOUTHERN	3	1	PROBATION
IOWA NORTHERN	1	1	PROBATION
IOWA SOUTHERN	2	1	PROBATION
KANSAS	3	2+	PROBATION
KENTUCKY EASTERN	3	2	PROBATION
KENTUCKY WESTERN	3	1	PROBATION
LOUISIANA EASTERN	6	1	SEPARATE OFFICE
LOUISIANA MIDDLE	1	1	PROBATION
LOUISIANA WESTERN	2	2	PROBATION
MAINE	1	2	PROBATION
MARYLAND	14	2	SEPARATE OFFICE
MASSACHUSETTS	5	2	INTERMEDIATE
MICHIGAN EASTERN	13	1+	SEPARATE OFFICE
MICHIGAN WESTERN	3	1	PROBATION
MINNESOTA	4	2	PROBATION
MISSISSIPPI NORTHERN	1	1	PROBATION
MISSISSIPPI SOUTHERN	2	2	PROBATION
MISSOURI EASTERN	4	1	PROBATION
MISSOURI WESTERN	3+	2	PROBATION-SPECIAL REC. ³
MONTANA	2	1+	PROBATION
NEBRASKA	1	1	PROBATION
NEW HAMPSHIRE	1	1	PROBATION

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TABLE 3 (Cont'd.)

<u>DISTRICT</u>	<u>STAFF</u> ¹	<u>LOCATIONS</u> ²	<u>RECOMMENDATION</u>
NEW JERSEY	9	2	SEPARATE
NEW MEXICO	3	1+	PROBATION
NEVADA	5	2	INTERMEDIATE
NEW YORK EASTERN	11	1	SEPARATE OFFICE
NEW YORK NORTHERN	1	1	PROBATION
NEW YORK SOUTHERN	12	2	SEPARATE-SPECIAL REC. ³
NEW YORK WESTERN	3	1	PROBATION
NORTH CAROLINA EASTERN	4	1+	PROBATION
NORTH CAROLINA MIDDLE	3	2	PROBATION
NORTH CAROLINA WESTERN	3	2	PROBATION
NORTH DAKOTA	1	1+	PROBATION
OHIO NORTHERN	5	3	PROBATION
OHIO SOUTHERN	4	3	PROBATION
OKLAHOMA EASTERN	2	1+	PROBATION
OKLAHOMA NORTHERN	2	2	PROBATION
OKLAHOMA WESTERN	3	1+	PROBATION
OREGON	2	1+	PROBATION
PENNSYLVANIA EASTERN	7	1	SEPARATE OFFICE
PENNSYLVANIA MIDDLE	3	2	PROBATION
PENNSYLVANIA WESTERN	3	1	PROBATION
PUERTO RICO	4+	1	INTERMEDIATE
RHODE ISLAND	1	1	PROBATION
SOUTH CAROLINA	6	3	INTERMEDIATE
SOUTH DAKOTA	2	3	PROBATION
TENNESSEE EASTERN	4	3	PROBATION
TENNESSEE MIDDLE	3	1	PROBATION
TENNESSEE WESTERN	5	1	INTERMEDIATE
TEXAS EASTERN	2	2	PROBATION
TEXAS NORTHERN	10	2	SEPARATE-SPECIAL REC. ³
TEXAS SOUTHERN	24	4	SEPARATE OFFICE
TEXAS WESTERN	13	4	SEPARATE OFFICE
UTAH	2	1	PROBATION
VERMONT	1	1	PROBATION
VIRGINIA EASTERN	15	4	SEPARATE OFFICE
VIRGINIA WESTERN	2	2	PROBATION
VIRGIN ISLANDS	5	2	INTERMEDIATE
WASHINGTON EASTERN	2	2	PROBATION
WASHINGTON WESTERN	5	2+	INTERMEDIATE
WEST VIRGINIA NORTHERN	2	1+	PROBATION
WEST VIRGINIA SOUTHERN	2	2	PROBATION
WISCONSIN EASTERN	2	1	PROBATION
WISCONSIN WESTERN	1	1	PROBATION
WYOMING	1	1+	PROBATION

¹ DOES NOT INCLUDE STAFF NEEDED FOR MANAGEMENT, BOTH OFFICER AND CLERICAL POSITIONS ARE INCLUDED

² "LOCATIONS"-REFERS TO THE NUMBER OF SITES WITHIN A DISTRICT IN WHICH AT LEAST 75 CRIMINAL DEPENDANTS MAKE THEIR INITIAL APPEARANCE PER YEAR. ANY DISTRICT WITH MORE THAN ONE SITE HAVING LESS THAN 75 INITIAL APPEARANCES - WHICH NUMBER STILL REPRESENTS 10% OF THE BAIL WORK - WAS GIVEN A "+" AFTER THE NUMBER OF MAJOR LOCATIONS.

³ SPECIAL RECOMMENDATIONS ARE MADE IN 6 OF THE 10 DEMONSTRATION DISTRICTS, IN VIEW OF UNIQUE SITUATIONS THERE.

TABLE 4
STAFFING ANALYSIS

CIRCUIT AND DISTRICT	PROBATION	PROBATION	PROBATION	PRETRIAL
	STAFF AVAILABLE	STAFF NEED	STAFF + / -	STAFF NEED
FIRST CIRCUIT				
MAINE	5	6	- 01	1
MASSACHUSETTS	42	42	00	5
NEW HAMPSHIRE	5	5	00	1
RHODE ISLAND	6	6	00	1
PUERTO RICO	18	17	01	4
SECOND CIRCUIT				
CONNECTICUT	22	23	- 01	3
NEW YORK, N.	11	9	02	1
B-NEW YORK, E. (11)	93	97	- 04	11
P-NEW YORK, S. (17)	96	96	00	12
NEW YORK, N.	17	18	- 01	3
VERMONT	6	4	02	1
THIRD CIRCUIT				
DELAWARE	8	7	01	1
NEW JERSEY	67	61	06	9
B-PENNSYLVANIA, E. (7)	72	71	01	7
PENNSYLVANIA, N.	14	14	00	3
PENNSYLVANIA, W.	30	24	06	3
VIRGIN ISLANDS	10	11	- 01	5
FOURTH CIRCUIT				
B-MARYLAND (14)	81	88	- 07	14
NORTH CAROLINA, E.	31	33	- 02	4
NORTH CAROLINA, N.	26	26	00	3
NORTH CAROLINA, W.	25	28	- 03	3
SOUTH CAROLINA	41	43	- 02	6
VIRGINIA, E.	46	46	00	15
VIRGINIA, W.	20	19	01	2
WEST VIRGINIA, N.	5	8	- 03	2
WEST VIRGINIA, S.	13	14	- 01	2
FIFTH CIRCUIT				
LOUISIANA, E.	33	34	- 01	6
LOUISIANA, N.	10	10	00	1
LOUISIANA, W.	22	23	- 01	2
MISSISSIPPI, N.	11	11	00	1
MISSISSIPPI, S.	14	13	01	2
P-TEXAS, N. (7)	69	74	- 05	10

TABLE 4
STAFFING ANALYSIS

CIRCUIT AND DISTRICT	PROBATION STAFF AVAILABLE	PROBATION STAFF NEED	PROBATION STAFF + / -	PRETRIAL STAFF NEED
TEXAS, E.	19	18	01	2
TEXAS, S.	110	117	- 07	24
TEXAS, W.	79	84	- 05	13
SIXTH CIRCUIT				
KENTUCKY, E.	21	19	02	3
KENTUCKY, W.	25	23	02	3
B-MICHIGAN, E. (18)	66	64	02	13
MICHIGAN, W.	16	16	00	3
OHIO, N.	49	43	06	5
OHIO, S.	31	31	00	4
TENNESSEE, E.	22	23	- 01	4
TENNESSEE, M.	21	23	- 02	3
TENNESSEE, W.	25	24	01	5
SEVENTH CIRCUIT				
P-ILLINOIS, N. (7)	55	102	- 07	11
ILLINOIS, C.	15	16	- 01	3
ILLINOIS, S.	15	13	02	2
INDIANA, N.	21	15	06	2
INDIANA, S.	25	24	01	3
WISCONSIN, E.	13	13	00	2
WISCONSIN, W.	7	6	01	1
EIGHTH CIRCUIT				
ARKANSAS, E.	19	19	00	3
ARKANSAS, W.	10	9	01	1
IDAHO, N.	6	6	00	1
IDAHO, S.	11	11	00	2
MINNESOTA	25	26	- 01	4
MISSOURI, E.	36	39	- 03	4
B-MISSOURI, W. (6)	28	27	01	3
NEBRASKA	10	9	01	1
NORTH DAKOTA	10	9	01	1
SOUTH DAKOTA	16	15	01	2
NINTH CIRCUIT				
ALASKA	10	10	00	2
ARIZONA	56	56	00	8
CALIFORNIA, N.	63	65	- 02	9
CALIFORNIA, E.	45	50	- 05	7
P-CALIFORNIA, C. (18)	149	151	- 02	16
CALIFORNIA, S.	68	68	00	15

TABLE 4
STAFFING ANALYSIS

CIRCUIT AND DISTRICT	PROBATION STAFF AVAILABLE	PROBATION STAFF NEED	PROBATION STAFF + / -	PRETRIAL STAFF NEED
HAWAII	13	13	00	3
IDAHO	10	10	00	1
MONTANA	13	14	- 01	2
NEVADA	24	25	- 01	5
OREGON	24	24	00	2
WASHINGTON, E.	10	12	- 02	2
WASHINGTON, W.	31	29	02	5
GUAM/MARIANA ISLANDS	3	3	00	1
TENTH CIRCUIT				
COLORADO	35	36	- 01	4
KANSAS	24	25	- 01	3
NEW MEXICO	26	21	05	3
OKLAHOMA, N.	13	12	01	2
OKLAHOMA, E.	10	9	01	2
OKLAHOMA, W.	21	20	01	3
UTAH	15	15	00	2
WYOMING	8	6	02	1
ELEVENTH CIRCUIT				
ALABAMA, N.	40	40	00	5
ALABAMA, M.	14	12	02	2
ALABAMA, S.	13	13	00	2
FLORIDA, N.	17	16	01	2
FLORIDA, M.	52	54	- 02	7
E-FLORIDA, S.	82	84	- 02	23
P-GEORGIA, N. (3)	49	51	- 02	6
GEORGIA, M.	15	15	00	2
GEORGIA, S.	18	15	03	3

B - DEMONSTRATION DISTRICT - INDEPENDENT
P - DEMONSTRATION DISTRICT - PROBATION
E - EMERGENCY PRETRIAL OFFICE
() - CURRENT PRETRIAL SERVICES STAFF

The Pretrial Services Act of 1982 excluded the District of Columbia. The staff needs of the district are also excluded from this table.

Pretrial Services Staff needs (Clerical and Professional)	422.0
Management Support	59.5
	<hr/>
Total	481.5
Probation Staff needs	2,799.0 [†]
Probation Staff allocated	2,786.0

The table reflects by district the staff required to provide pretrial services based on a projection of criminal defendants entering the system for statistical year 1985 and a work measurement formula which provided one position for each 110 defendants, plus a management and support factor. The table also reflects probation staff needs based on existing workload as of June 30, 1983, the number of positions allocated as of December 15, 1983, and whether a district has staff available in excess of needs for probation work or is deficient.

UNITED STATES GOVERNMENT

memorandum

DATE: January 30, 1984
 TO: *Nichols*
 William M. Nichols, General Counsel
 SUBJECT: Implementation of the Pretrial Services Act of 1982
 FROM: William E. Foley, Director

We are nearing the February 1 deadline for a report to the Senate Appropriations Committee on the Administrative Office's plan for implementing the Pretrial Services Act of 1982, Pub. L. No. 97-267 (September 27, 1982). Planning for the implementation of the Act has been plagued from the beginning by a nagging question of statutory construction: If a district court elects to provide pretrial services through its existing probation office, does the Act prohibit the assignment of the additional resources which may be needed for that function? This memorandum is intended to address that question.

The legislative history of the Act is replete with indications of intent that additional personnel positions and other resources would be provided only in those districts where pretrial services are delivered through a separate office established for that purpose. Stated conversely, the sponsors and managers of the legislation desired that no additional resources be provided in districts where pretrial services are furnished as a function of the probation office. Relevant portions of the legislative history are set forth in the attached document.

In two respects, the intent evidenced in the legislative history is reflected to some extent in the Act itself. Section 3, amending 18 U.S.C. § 3153, provides that the chiefs of separate pretrial services offices "shall appoint such other personnel as may be required" but that chief probation officers "shall designate personnel [appointed under the probation chapter of Title 18 U.S.C.] to perform pretrial services. . . ." (Emphasis added.) Section 9 of the Act authorizes appropriations for separate pretrial services offices, but provides no additional authorization of appropriations for probation offices. These two statutory provisions do not of themselves prohibit the provision of additional resources to probation offices because authority to appoint probation officers is provided by another statute, 18 U.S.C. § 3654, and appropriations are impliedly authorized by that section and by 18 U.S.C. § 3656. Thus if there is such a prohibition, it stems from the legislative history of the Act. There is, of course, a fundamental rule of statutory construction to the effect that legislative history is not law and that the statutory language is controlling in the event of conflict (citations omitted). Under ordinary circumstances, there would be no need to resort to such a rule. As the head of an agency, you are responsible for implementing laws in conformance with their legislative history whenever possible. In this case, however, meticulous adherence to that principle is rendered difficult and in some respects impossible by other provisions of the Act as well as certain practical staffing considerations.

Section 3 of the Act revised 18 U.S.C. § 3152 to require in subsection (a) that you provide, under the supervision and direction of the Judicial Conference, for the establishment of pretrial services in each judicial district "to such extent and in such

William E. Foley
January 30, 1984
Page 2

amounts as are provided in appropriations acts."* Subsection (b) of the new § 3152 provides that after March 27, 1984, separate pretrial services offices will be established under your general authority if a district court and the appropriate judicial council jointly recommend that course. The net effect of subsections (a) and (b) is that you are responsible to provide for the delivery of pretrial services system-wide, but the choice as to the mode of delivery is left to the individual district courts, with the concurrence of the judicial council where the choice is a separate office. This division of responsibility and authority poses a dilemma for the Administrative Office because it has the potential for conflict between your statutory duties and the legislative intent reflected in the attachment. For example, if the court in one of the districts which now has a separate pretrial services office decides for any reason not to continue the office after March 27, the burden of delivering pretrial services falls upon the district probation office. If existing resources are inadequate to discharge that burden, you must comply with your statutory duty to provide for the establishment of the pretrial services. 18 U.S.C. § 3152(a). This may necessitate a request to the Congress for additional personnel and associated funds, legislative history to the contrary notwithstanding.

The abolition of a demonstration pretrial services office by decision of a district court may or may not occur, but there will almost certainly be a need for additional probation personnel in some small districts, where a recommendation for a separate office is unlikely. For example, in a district for which the Administrative Office's survey has established that the probation officers currently assigned are fully utilized and that an additional officer will be needed to provide effective pretrial services, you have a statutory duty to provide the necessary probation officer personnel space to the district, seeking Congressional authorization through the appropriations process if necessary.

I recommend that we make every effort to implement the Pretrial Services Act in harmony with the intent expressed in its legislative history. However, in instances where a conflict arises between that intent and the statutory mandate that pretrial services be provided in each district, I conclude that we must regard the statute as controlling.

Attachment

cc: James E. Macklin, Jr.
William J. Weller
Edward V. Garabedian
Donald L. Chamlee ✓
Dewey R. Helsing

* The insertion of the quoted clause in subsection (a) strongly suggests that the drafters contemplated that there would be circumstances requiring additional resources in probation offices.

ATTACHMENT

The legislative history of the Pretrial Services Act supports the conclusion that Congress did not intend for additional personnel to be hired by or transferred to probation offices which perform pretrial services. In discussing the funding of pretrial services in the courts, the Senate Report contains the following statement:

"... If it is determined that existing probation personnel is capable of performing pretrial services in some districts, the budget process by which the Administrative Office of the United States Courts determines the funding of all probation activities is necessarily the appropriate process for determining the most economical means of performing pretrial services through probation offices. In those districts in which existing resources are inappropriate or inadequate to provide pretrial services, [18 U.S.C. § 3152(b)] authorizes a district to be designated a Special District in which a chief pretrial services officer who is not a probation officer will be provided necessary funds to administer pretrial services."
[Emphasis added.]

S. Rep. No. 77, 97th Cong., 1st Sess. 9 (1981). This Report clearly indicates that special funding for pretrial services functions would be available only in those districts where pretrial services are provided independently of the probation department.

Reaffirmation of Congress' intent not to supplement existing probation resources is provided by the Conference Report which accompanied S. 923, the bill which became the Pretrial Services Act of 1982. That Report refers to the 18-month period following enactment of the bill during which pretrial services beyond the existing demonstration districts are to be provided under the supervision of the chief probation officers, utilizing existing resources, with no authority for additional appropriations. This period is to be used to evaluate the need for pretrial services and the resources available in each district. According to the Report, this evaluation process

"... should permit the United States courts to identify those districts which are capable of providing pretrial services within existing resources and those which will need additional resources and will therefore be required to utilize the special districts provision of this statute."

H.R. Rep. No. 792, 97th Cong., 2nd Sess. 8 (1982).

The Conference report also points out that the bill provides for the "appointment" of additional personnel by the chief pretrial services officer but only permits the chief probation officer to "designate" existing probation personnel to perform pretrial services functions. In explaining this distinction, the Report states:

"[a]uthority for the chief probation officer to 'designate', rather than 'appoint', is necessary to remain consistent with the determination of the Managers that additional personnel will be appointed only in special districts under the supervision of the chief pretrial services officer."

TESTIMONY OF HON. GERALD B. TJOFLAT, JUDGE OF THE U.S. COURT OF APPEALS FOR THE 11TH CIRCUIT AND CHAIRMAN OF THE JUDICIAL CONFERENCE'S COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM; ACCOMPANIED BY WILLIAM E. FOLEY, DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS; JAMES E. MACKLIN, JR., MR. FOLEY'S EXECUTIVE ASSISTANT; WILLIAM M. NICHOLS, GENERAL COUNSEL OF THE ADMINISTRATIVE OFFICE; DONALD L. CHAMLEE, CHIEF OF THE PROBATION DIVISION; AND GUY WILLETTS, CHIEF OF THE PRETRIAL SERVICES BRANCH

Judge TJOFLAT. Thank you, sir.

The statement includes all the information given to the Senate Committee on Appropriations by the Administrative Office. That report is dated February 10 and gives that committee an up-to-date assessment of what has been done to implement the Pretrial Services Program.

We have furnished the committee, my understanding is, with all of the letters that the Director has written to the chief judges of the various district courts, containing the Director's recommendations as to the organization that the courts should utilize for the delivery of pretrial services.

I think in addition—and you can correct me, Mr. Chairman, if I am mistaken—that you also have considerable correspondence from various chief judges to the Director or to myself, as chairman of the Committee on the Administration of the Probation System, about the status of pretrial services in their various districts.

Mr. HUGHES. Yes, we do have that.

Judge TJOFLAT. You do have all of that. Well, I will summarize as follows:

We have 10 pilot districts out of the 93 that are affected by the act.

There are recommendations to 17 districts from the Director that those districts establish separate pretrial services units.

There are recommendations to 64 districts that the Pretrial Service Program be delivered through the probation offices of those courts, and we have 11 recommendations—or recommendations to 11 districts, which I will call intermediate districts, in which we do not make a firm recommendation that the service be delivered either in a separate unit or through the probation office. Rather, we advise the courts that they are in a gray area, let us say, and that there are, however, strong reasons why they should consider establishing a separate unit.

That is where we are with regard to the recommendations. Those letters all went out on February 27.

The record of the delivery of pretrial services across the country is spotty. Some courts have done extremely well, and I am saying some courts in addition to the 10 pilot districts with which you are very familiar. There are no services being performed in some, but they are a clear minority of the courts, and then there are a great number of courts in between which are doing the best they can to perform the pretrial services function as mandated by the statute.

The courts right now, across the country, are wrestling and have been for a couple of months, I would say, with the problem about what form to utilize in delivering these services.

They are well aware that the Administrative Office of the U.S. Courts has asked the Appropriations Committees of the House and the Senate for funds, under the probation service appropriation, to provide for officers for pretrial services work, and they are very aware of the possibility that those funds may not be forthcoming, on the theory that the only way funds can be appropriated to provide for pretrial services in any court is if that court decides to have a separate pretrial services unit and so petitions the circuit council and the council agrees and one is thus established.

That right now is about where we are.

Mr. HUGHES. Let me just pick up right there. When you say on the theory, isn't that what the law says, Judge? Doesn't the law, in essence, indicate—I thought very clearly—that there would be no funds available to provide additional probation officers to perform pretrial services?

Judge TJOFLAT. The conference report is clear. The joint House/Senate conference committee, in its report, is clear that there should be no funds appropriated to implement pretrial services as ordained by the act except in those courts in which a separate unit is established.

Mr. HUGHES. Maybe the best thing to do——

Judge TJOFLAT. I don't know.

Mr. HUGHES. Well, I just think that somewhere along the line the train has gotten off the track. Let me see if we can't go back and talk about a little history.

You may remember, Judge—Mr. Foley, I am sure you do—the beginning of the legislative process on this act. The bill, as originally introduced, provided no presumption in favor of either a separate agency or probation performing the services.

We heard extensive testimony. We saw a lot of graphs, a lot of charts, which in fact you folks provided for us, and I remember very vividly, that testimony demonstrated beyond any question that separate pretrial service agencies were far preferable than probation.

In fact, the final report of the Director of the Administrative Office of the U.S. Courts stated that pretrial services should be expanded to all Federal judicial districts, and these units—and I am quoting—"would be independent of the probation service except in those districts in which the caseload would not warrant a separate unit." You do recall that recommendation, I'm sure.

Judge Tjoflat, when you testified on behalf of the Judicial Conference in favor of the bill, you may remember saying the following:

You have a natural inclination in some districts, and especially the larger ones in metropolitan areas, where folks are serving two masters, to serve one better than the other. So if you have a probation office performing both functions, pretrial services and probation, and he reports to the probation officer and he to the chief judge, and if the probation work is lagging behind, that work will get done first.

Do you remember making that statement?

Judge TJOFLAT. Yes, sir.

Mr. HUGHES. I am sure you also recall that the Federal Probation Officers Association asserted to this committee that pretrial services would be provided by the probation officers with no additional resources or personnel, and there therefore would be a great cost saving if we mandated that pretrial services be provided through probation.

I am paraphrasing their testimony.

The Judicial Conference disagreed with the recommendation; I don't think you ever bought that argument. But that was their clear testimony.

Judge TJOFLAT. Who never bought it?

Mr. HUGHES. I am not sure that the Judicial Conference—

Judge TJOFLAT. Oh, the Judicial Conference. I think I can speak for myself, but my testimony from the very beginning has been exceedingly clear that the representations made by the Federal Probation Officers Association, or individual probation officers, that the service was sufficiently overstaffed—or staffed, whichever the case may be—to handle additional work was an unfounded representation to the Congress.

As a matter of fact, my testimony on that point, Mr. Chairman, was so strong that I said the following: That the Probation Service through the years had dealt as candidly with the Congress as possible, that we always adopted—and I am speaking for the Judicial Conference—the policy that we would tell the Congress whenever we were overstaffed or it appeared that we would be overstaffed, and we have from time to time had a reduction in probation officers, especially during the previous administration when the Federal criminal caseload had a precipitous drop.

We have always advocated reducing the Probation Service in terms of officers and supporting personnel to reflect a decrease in prosecutions, persons under supervision—and that includes parolees.

On the other hand, we have always been candid with the Congress that when we ask for additional probation officers that means that the work is out there to be done, and the work measurement study, pursuant to which we make our request, fully justifies the increase in officers, so that when officers in the field represented to the Congress that they had time on their hands, that was simply not the case. At the present time the Probation Service is understaffed by some 300 or so positions.

So when the Pretrial Services Act was enacted, while it is true—and I can understand the Congress requiring that all of the courts, the 83 courts, for 18 months provide pretrial services with existing staff—because the Probation Service was at that time in an understaffed position and we were evening out the staffs in the various districts so that everybody was proportionately understaffed—we knew, and I think everybody knew really, notwithstanding those representations that were made, that the probation officers during the 18-month period who would be providing pretrial services would do so to some extent at the expense of probation work.

So that when we arrive at March 27, excluding for sake of discussion the 10 pilot districts which are adequately staffed in pretrial services, there is in the system, district by district, an understaffed situation. So that theoretically, if every court in the system exer-

cised its option, as permitted under the statute, to deliver pretrial services through the probation service, they would be delivered at the expense of some probation function.

Mr. HUGHES. Well, Judge, you know, what you are saying is absolutely the representations that you made to me and other members of the committee, and I remember your testimony, and I must say you persuaded me that in fact the representations of the Probation Officers Association were absolutely baseless.

Judge TJOFLET. Some Members of Congress weren't persuaded.

Mr. HUGHES. Well, yes, that is true, and we found out when we got to the conference that some Members were not persuaded, and that is why we ended up with an 18-month test run.

I mean, the whole idea——

Judge TJOFLET. We are in complete agreement. You and I knew at the end of 18 months that we would be understaffed in the district courts.

Mr. HUGHES. The whole purpose of the 18-month trial period was to determine whether or not we could in fact provide pretrial services with existing probation resources.

Now, based on that we wrote the statute, and the legislative history supports the clear meaning of the statute's language, so there would be no money for additional probation officers, isn't that so?

Mr. MACKLIN. I am Mr. Macklin, sir.

Mr. HUGHES. You tell me what you intended when you wrote the statute.

Mr. MACKLIN. I didn't write the statute.

Mr. HUGHES. Well, I did, and I am telling you what I understood to be the intent, and I thought we made it fairly clear. I mean, I don't know how, Mr. Macklin, you can say that that wasn't the purpose. We provided no authorization for funds for additional probation officers.

Can you find that in the statute?

Mr. MACKLIN. No, sir, I cannot.

Mr. HUGHES. Can you find authorization in the statute for appropriations for additional pretrial services?

Mr. MACKLIN. I can't.

Mr. HUGHES. Why do you think we did that, Mr. Macklin?

Mr. MACKLIN. Because there were no such organizations as pretrial service organizations prior to the enactment of that bill.

Mr. HUGHES. We were creating it.

Mr. MACKLIN. That is correct, sir.

Mr. HUGHES. If we wanted to give you an authorization to hire and appoint new probation officers to perform pretrial services, we could clearly do that. But we didn't do that. We didn't do it for a reason.

We didn't do it because you all persuaded us that the independent agency concept was a good concept.

You also persuaded us—at one point in the legislative history when we were going to mandate that all agencies, all courts have a separate agency, you told us don't do that, please don't do that. Isn't that what you told us?

Because in the final analysis, Judge Tjoflet, that would be the way it would end up anyway. Isn't that exactly what you told us?

Because I remember a time when we were going to draft a statute which said just that. Since you persuaded us that separate agencies were so good, that is what we were going to mandate, separate agencies.

Judge TJOFLAT. We said that there were courts in which it would be more efficient not to have a separate pretrial services unit and that the services could be performed more efficiently, more economically, and with better deployment of personnel if handled in the probation service.

I don't know whether I said the following, but I add to that that if the Congress had mandated a separate pretrial services agency in every district across the United States, in some courts those separate units would have been, in effect, swallowed up in the probation function.

Mr. HUGHES. Your testimony was that there would be maybe eight or nine districts where it would make sense to provide pretrial services through probation. Isn't that what you told us? I mean, now we are talking in terms of a total of 60.

Judge TJOFLAT. I don't recall the numbers that I mentioned.

Mr. HUGHES. I remember your testimony. You indicated that you thought there might be eight or nine instances where there would be some reason to handle the pretrial service function within the existing probation service. Now, that is a long way from the 64 districts that you now recommend be handled through probation and the 11 intermediate districts which apparently are in the gray area.

But, you know, I would like an answer to the question. Where do you find anywhere in the law the authorization to hire additional probation officers to perform pretrial services?

Judge TJOFLAT. I didn't say I found that in the statute. That is an issue that has been addressed by the general counsel.

Mr. HUGHES. I understand your general counsel. Mr. Nichols, what do you have to say about that?

Mr. NICHOLS. There is no authorization in the statute, Mr. Chairman, to hire additional probation officers. However, the statute does impose a duty upon the Director of the Administrative Office and upon each district court to provide services. It must be provided either through a separate office or as part of an additional function for the probation offices.

The statute also vests the decision as to the modality of providing of those services in the district courts, with the concurrence of the circuit councils where they opt for a separate office.

Mr. HUGHES. Well, Mr. Nichols, when you say "when they opt," doesn't the statute have a bias in favor of pretrial service agencies, separate agencies?

Mr. NICHOLS. It certainly has a bias insofar as the authorization for funding is concerned, right.

Mr. HUGHES. You have read the legislative history, haven't you?

Mr. NICHOLS. Yes; I have.

Mr. HUGHES. Do you find it confusing?

Mr. NICHOLS. Not confusing, no.

Mr. HUGHES. Did you send that on to the judges, to the various courts, so that they could see the legislative history as well as the statute?

Mr. NICHOLS. I am not sure I am qualified to answer that question. I am a newcomer in the Administrative Office, Mr. Chairman, and I am not familiar with all of the correspondence.

Mr. HUGHES. How about Mr. Foley, maybe you can answer that question.

Mr. FOLEY. We sent the legislative history out in October 1983.

Mr. HUGHES. It went out—

Judge TJOFLAT. It went out to the courts under my cover letter of October 27, 1983.

Mr. HUGHES. Why wasn't it sent out in 1982 when the law was set out?

I mean, courts are all the time trying to interpret statutes based upon what was the intent of the Congress. I really don't understand. I am at a loss to understand. If there was any confusion about what the statute said, why didn't you share the legislative history, which I think very clearly enunciates the policy behind the statute?

Judge TJOFLAT. Mr. Chairman, I think the Director sent a letter out before I did, and I am looking for it in my material. The first letter was October 14, 1982. That was about 2 weeks after the statute was passed, and my letter, the October 27, 1983 letter, summarized the statute, discussed the appropriations problem. That was not a heavily detailed letter. That was October 27, 1983 my letter went out.

But the courts were aware of the problem because there were numerous regional training conferences, Mr. Chairman. A lot of other things were going on immediately. The statute and the legislative history went out to the courts in my letter of October 27 of last year.

Mr. HUGHES. Let me just read to you a paragraph out of that memorandum which—

Judge TJOFLAT. Which memo?

Mr. HUGHES. The memo that you are talking about, dated October 14, 1982.

Judge TJOFLAT. The director's memo?

Mr. HUGHES. The director's memo.

Page 2 says:

When the district court of a circuit council recommends the establishment of pretrial services under section 3152(b), authority is provided for additional appropriations to support pretrial services. In those districts where pretrial services are established in probation districts, staffing needs will be met through the usual budget process.

First of all, that, in my judgment, is an absolute misrepresentation of policy. That flies in the face of exactly what was the intent of Congress. It is basically an invitation for the courts to implement at their option pretrial services through probation or pretrial services, whichever they feel comfortable with.

I mean, I can't read it any other way. That was never the intent of the law. You know, I don't know why it is so confusing.

Mr. Nichols, you suggest that there is a problem. The court is mandated to set up pretrial services throughout the country, and you have got a problem implementing that. I don't know what the problem is.

What we have said in the statute—and we said very clearly—was, No. 1, you have persuaded us that pretrial services is a good and helpful addition to our system; No. 2, for 18 months we are going to try and find out if we have resources to handle it in-house in the probation offices. At the end of that 18 months, why, if we find that we can't handle pretrial services with existing resources, we are going to set up separate agencies, and we authorized appropriations to hire new people to do just that.

Now, why is that so confusing, and why does that present so many complications?

Judge TJOFLAT. Mr. Chairman, the confusing part is as follows: When the statute was passed, as a matter of fact at all times antecedent to the passage of the statutes which are relevant to this discussion, there were no personnel in any district who could provide for pretrial services in addition to the probation work without depreciating the quality of the probation work.

Now, given that phenomenon, there was no need to pass a statute which gave any local option to the courts unless the Congress intended that the local district courts would decide what to do, because the Congress should have anticipated that if any extra people were to be provided, they would have to be in separate units and in every court in the country, including the five pretrial services units operating in the probation service and the pilots, and every other district court would have to opt for a separate unit to have the personnel to deliver the services.

Mr. HUGHES. Well, if that were the case, then, then what you folks should have done was come back to the Congress and represent to us that you have really no districts, or only three districts, where you have adequate resources to handle pretrial services.

Judge TJOFLAT. In my testimony last June, I think I told the committee straightforward that we didn't have anybody in the probation service who could provide—we didn't have an overstuffed situation.

Mr. HUGHES. Unfortunately, the Probation Officers Association has done the system and the Congress a grave disservice. There are absolute misrepresentations. Their effort to lead the Congress to believe that there are adequate resources has done a grave disservice to this program and to the court system.

Judge TJOFLAT. When I first read the conference report, it was entire news to me. What was news was the notion that the Congress evidently thought the probation service was overstuffed.

Mr. HUGHES. Well, Judge, under the law as it was written, you were only expected to do what you could do with existing resources, no more, no less, that is all. The law provides for no authority to hire new probation officers to perform probation work.

Is there any question about that?

Judge TJOFLAT. Under the statute?

Mr. HUGHES. Under the statute.

Judge TJOFLAT. The statute does not provide for the appropriation of any funds.

Mr. HUGHES. It uses the word "designate." To "designate" probation officers is a key word.

Judge TJOFLAT. I realize that. One says "appoint" and one says "designate."

Mr. HUGHES. And it was done for the purpose spelled out very clearly in the legislative history.

Judge TJOFLAT. I understand that, and if there are no funds appropriated to the judicial branch to provide for pretrial services officers to perform the function in a probation office of a court, those districts which have not opted to establish a separate unit will be advised forthwith that they will perform all pretrial services mandated by the act along with the probation work mandated by other law with the present staff, and they will also be told that the probation service will continue to carry out its program, which none is in the latter stages, of removing the overstaffed condition from some few districts in order that the understaffing situation be cured in some other districts.

That is all reflected the joint statement that Mr. Foley and I have submitted. That's what will be communicated to the court.

If they want to have further personnel, they'll have to opt to have a separate unit. Either that or they'll stretch their probation officers over the two functions.

Mr. HUGHES. Judge, you know I don't understand when you say they opt to do something.

Judge TJOFLAT. I say they opt, because the statute requires the circuit council, among others, to get into the decisionmaking process.

Mr. HUGHES. Only to implement the law.

Judge TJOFLAT. I understand that. The district court, however—the court's got to meet and the judges have to decide to have a separate unit, and then they have to petition the circuit council and make a case for it.

Mr. HUGHES. How about if we said very clearly in the statute we want, in every district throughout this country, a separate pretrial service agency set up?

Judge TJOFLAT. If the statute says that a separate pretrial service agency will be set up.

Mr. HUGHES. What's the difference between saying that and saying exactly what we said with a test period to see whether there are additional resources? I mean, what more could we have done to send the same signal?

Judge TJOFLAT. Well, the problem is the misrepresentation that you've earlier alluded to and the true situation with regard to staffing of the probation service.

Mr. HUGHES. Well, that 18 months is over and we've discovered we don't have adequate probation officers in any district in this country.

Judge TJOFLAT. I realize that; and we also have a lot of district courts out there that think they have the right to decide whether they have the right to administer pretrial services through their probation service or opt for a separate unit.

Mr. HUGHES. Even if I bought the argument, which I confess I really don't, that the statute gives individual district courts unfettered discretion on how to administer pretrial services, how do you justify the action of the Probation Committee and the administrative office in recommending that over two-thirds of the districts establish offices within probation?

Judge TJOFLAT. I don't buy that they have unfettered discretion. Their discretion is not circumscribed explicitly beyond the direction that you either deliver pretrial services in a separate unit or you do it through the probation service. The judges have to run their courts as best they can.

The question is, How could the Probation Committee recommend that the Director make the recommendations that he's made to these various courts; and I can answer that. Would you like me to answer that?

Mr. HUGHES. Yes.

Judge TJOFLAT. The committee consists of seven judges. Three or four are chief judges of district courts. I don't know what the combined experience in the Federal judiciary is of the members of the committee, but it's considerable and they're from all across the country in all sizes of courts; and I include former committee members.

We have an attrition each year, but we've had members on the committee from at least three of the pilot districts. So the committee members, as a whole, are not unfamiliar with the whole history of pretrial services.

We recognize that the statute authorizes district courts across the country to decide what to do. We also know what the conference committee report says about appropriated money; but, nevertheless, each of these districts across the country has to decide for itself whether it's going to petition the circuit council to establish a separate unit or do it alone.

There is sketchy data in a lot of these districts.

Mr. HUGHES. Where does the statute suggest that that's going to be their function? I understood that their function basically was conditioned upon the results of the 18-month test. If they found as a fact that they don't have adequate probation resources to perform pretrial services, then one—

Judge TJOFLAT. Well, we're back to the beginning of our discussion, which is if that was the clear intent of the Congress, then the clear intent of the Congress was to have a separate unit in every district.

Mr. HUGHES. The clear intent of the Congress was to have it in every district except in those districts where there were adequate resources; and how are we going to find that out? That was the whole purpose of the 18 months.

Judge TJOFLAT. I understand that, but I'm operating under the assumption that there is some discretion in the district courts to decide which to do. Given the history of the strength of the probation service that I've put to you, I'm trying to explain how the Probation Committee recommended what it did to the director.

We do not have the best possible data from 83 districts. We have nothing like what we have out of the 10 pilot districts. We have the results of onsite inspections by staff members and we have—just plain have inhouse country knowledge about a lot of these courts.

We thought that the Director—and I'm talking about the committee—ought to make recommendations that, to the extent possible, were solid, unimpeachable recommendations. That is how we came to the conclusion that the Director—we would recommend that the Director advise that a court with more than four offices in

one location ought to be in a unit; and courts that are spread all over—and I'm talking about in terms of the probation function—have officers in different places.

Some officers operate like resident FBI agents, all by themselves someplace where bail setting is done in lots of different places where the caseload fluctuates; and given the spotty data, we thought that the court ought to decide. So we recommended in some of those that they operate in probation.

Then we got to the gray area courts; and, in those courts, we said, "You've got to decide." We didn't make a hard recommendation to the Director, but the Director's letter does indicate a bias toward units.

I've got the letter written to the chief judge of the District of Puerto Rico. On page 4 of the letter—and I'm going to read, for the record, the language in this letter which is almost identical to the language in 11 letters that went to these intermediate districts—this is after saying to the chief judge that the Probation Committee neither recommends a unit or a provision operation; it reads:

The Committee does not believe that the information contained in the assessment report leads to a clearcut conclusion regarding the most appropriate type of organization of pretrial services in your district. The pretrial services workload in the District of Puerto Rico would justify four positions operating out of one location. Based on the criteria used, the Probation Committee would normally recommend that the pretrial services be provided by the probation office. However, the workload approaches the size that requires a staff that could operate effectively and efficiently independent of probation. In addition, there is substantial detention, poor jail conditions and a local rule requiring a bail hearing before any defendant can be locked up. All of these factors call for a quick response time which may be difficult for the probation office to achieve it at the present time.

Now——

Mr. HUGHES. I don't understand.

Judge TJOFLAT. That's telling the chief judge of the District of Puerto Rico that the Probation Committee didn't make a hard and fast recommendation that they either have a unit or a probation office operation, but that on balance they ought to have a separate unit.

Mr. HUGHES. Judge, that doesn't support, as a matter of fact, the position that you maintain; and, if anything, it flies in the face of the intent of the statute because I don't know where you find any language that would give the courts the discretion to decide just exactly whether they want to handle pretrial services within probation or whether they have to set up a separate pretrial services agency.

There was no such discretion given to the courts. If anything, what we said was that if you have resources to handle pretrial services with your other probation work, then handle it within probation if that's what you feel is best. If you don't have resources to handle your present probation work plus provide pretrial services, then we want you to perform pretrial services and you have to, at that point, set up a separate agency.

Now, I don't know where—you know, you've developed this criteria—on what basis you've developed this criteria because it's not found in any legislative history. We never dreamed that, in fact, we would be creating this kind of discretion within the system.

Judge TJOFLAT. All I can say in response to that is that the statute mandates first that the Director deliver pretrial services. Second, it'll be done through the court's probation service.

Third, if the district court decides to do so, it may petition the circuit counsel to establish a separate pretrial services unit, in which event there will be provided funds for pretrial services officers and funds for a chief pretrial services officer.

Now, that's what the statute says.

Mr. HUGHES. No, the statute doesn't say that. The statute says, first of all we're going to set up pretrial services throughout the country. We're going to have an 18-month test period to determine whether we have adequate resources to do it under probation.

Second, after that 18 months if we find we don't have adequate resources we're going to set up separate pretrial service agencies to do it. Isn't that what it says?

Judge TJOFLAT. Well, we just have a different opinion as to the way the statute reads.

Mr. HUGHES. Well, where do you find the discretion that you've suggested exists for the courts to determine whether they want pretrial services or probation? Where is that found in the statute?

Judge TJOFLAT. Well, it says, in subparagraph (b) of 3152, that, "Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate U.S. district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge" et cetera.

Then, under section 3153, there is provision made for both types of operations.

Mr. HUGHES. Yes.

Judge TJOFLAT. In one, the pretrial services officer, under subsection (a)(1), is given the authority to appoint officers. That means to hire them.

Mr. HUGHES. What is the purpose of the 18-month test period?

Judge TJOFLAT. The purpose?

Mr. HUGHES. If the courts have the discretion to decide within their own judgment and jurisdiction whether to set up a separate agency, or handle pretrial services within probation, what was the purpose of the test period?

Judge TJOFLAT. To be candid, I don't understand the purpose of the test period. I do not know what the legislative genesis is, or was, for that test period, not at all.

I can understand using 18 months to try and figure out how much personnel may be required to deliver pretrial services.

Mr. HUGHES. You didn't understand that the test period, Judge, that came out of the conference report was to determine whether or not we really did have resources to handle—

Judge TJOFLAT. There wasn't a shadow of a doubt in the mind of the judiciary, and in my mind and the mind of the committee and the mind of the Administrative Office of the United States Courts,

not a shadow of a doubt that there were not enough officers to do any—underscore any—pretrial services.

Mr. HUGHES. We had a conflict. That was your submission, in which I happen to believe; and then we had the Probation Officers' Association which said that there were adequate resources and they persuaded some—

Judge TJOFLAT. I thought with all the persuasion, which is not much when you're dealing with a bureaucracy sometimes, that article III gave me to say that the probation system was understaffed. I said that the system was understaffed.

Mr. HUGHES. Well, the point is, though, you know, we made that point.

Judge TJOFLAT. We knew exactly what was going to happen in the 18 months.

Mr. HUGHES. You made that point and you persuaded me and many others, but you didn't persuade some others because obviously the probation officers persuaded others in the Congress that there were adequate resources. Isn't that the reason for the 18-month test?

Let me just, if I might—there's no question in my mind that that was the reason and I think you have to agree that that was the purpose of it.

Judge TJOFLAT. I am sure, Mr. Chairman, that some members of the House or Senate Judiciary Committees dealing with this subject had some serious doubt in their mind whether any additional officers were needed in many areas to perform this work, the pretrial services work.

Some may have entertained thoughts that the probation system was overstaffed; that the work measurement study used each year by the Administrative Office to determine the needs of the probation service was seriously in error, or at least faulty.

I don't have any question in my mind that some may have entertained those notions. We have tried to, over the years in dealing with the Appropriations Committees and in dealing with the subject of probation, to convince the Congress that we are not overstaffed and that when we ask for more officers the caseload is out there to demand it.

So it may well have been that some Members of both Houses thought that an 18 month period was necessary to decide which courts could provide pretrial services without any additional resources and which couldn't.

The point remains, though, that some 19-odd chief judges out there—and there were about 80 who were unacquainted with pretrial services when the act passed because their courts hadn't been delivering any of those services and they hadn't been confronted with this problem—read this law as giving them the authority to decide whether to deliver pretrial services at all; and that's why we had spotty results during the 18-month test period.

Some courts literally took probation officers away from probation work and put them to the task of doing pretrial services work, and both functions suffered to some extent in those courts. All cases, prior to trial weren't investigated and reports weren't made to the bail officer; and in some of those courts, low-risk probationers and

parolees weren't supervised like the book says they ought to be supervised, and the courts made do.

In some courts—and they are listed in our report, the lists are in there; there are a lot of them—they are understaffed, have been understaffed, especially in the sun belt States and they tried to do as best they could with probation officers who were working beyond their capabilities.

Mr. HUGHES. Well, I have some followup questions on it; but I want to recognize, at this point, Mr. Sawyer.

Mr. SAWYER. Good morning.

Judge TJOFLAT. Good morning.

Mr. SAWYER. I recall that you did say what you're saying now and what developed to be a fact; that namely the probation officers existing could not handle this problem. But, as I recall it, you recommended that the problem be handled by contract to other units. Do you recall that?

Judge TJOFLAT. I don't know that the Judicial Conference took a hard position on contract. The bill does provide that some of this work can be done by contract in 3152, subsection (a).

Mr. SAWYER. Didn't you suggest that when you testified?

Judge TJOFLAT. I don't think so.

Mr. SAWYER. I thought you did; but, in any event—

Judge TJOFLAT. The issue has discussed, there's no question about that; but as Mr. Macklin has just pointed out there isn't any authorization in the statute for contract money anyway. Maybe we will be back before the Appropriations Committee, the Administrative Office and its regular appropriations process, which I'm only tangentially familiar with.

Mr. SAWYER. Well, I do recall—although obviously it can't be laid on your doorstep—the probation officers' group saying that they could handle it with present personnel.

Judge TJOFLAT. Your memory, just like the Chairman's memory, is very vivid. That's exactly what they said; and every time one of them said it—and I appeared at some of the hearings when they testified—I said as politely as I possibly could that that was a lot of baloney.

Mr. SAWYER. Well, now they come in and they want 313 additional personnel to handle it.

Judge TJOFLAT. And we understand the incentive to do that.

Mr. SAWYER. Well, we have been confronted on a somewhat different issue, but with the problem of an intercircuit tribunal that's going to propose to handle appeals from—rather in cases where the circuits are in conflict and on delegation from the Supreme Court or something, which we're assured in no way are we going to need more judges.

Well, you know, it doesn't frankly make a lot of sense to me in that we're short of judges now that how all of a sudden we're going to be able to pull judges off the circuits to form these panels and not have to provide more judges. It doesn't make a lot of sense to me either; and, at this time, I went along with what I thought was a pretty hard recommendation of the probation officers that they could handle this thing.

My think was, to the extent that the 18-month trial indicated that maybe they couldn't then we could have some consideration of

some contract services. But I sure didn't have any idea that we were going to now be confronted with 313 additional probation officers.

Judge TJOFLAT. Well, one way we can solve that problem is to get even with those probation officers and not appropriate one dime to provide more people to do the work they said they could do.

Mr. SAWYER. Well, I don't want to get even with anybody.

Judge TJOFLAT. Well, I didn't mean it in that way—

Mr. SAWYER. On the other hand, I don't like kind of being led down a path with people who ought to know whereof they speak since it's their arena. Certainly we don't know.

I mean, we're dependent for a thing like that, the workload, on probation officers certainly either in the Judicial Conference or on the probation people themselves. We have no way of monitoring that, of knowing the workload other than a representation made to us.

So I join the Chairman in feeling a little misled on that situation and a little taken aback that we're not confronted with this request, and I kind of bear that in mind vis-a-vis this intercourt counsel, too, because I raised that same question, too, and I was assured by the judiciary there—I wasn't in this case, but I am there—that, "Oh, no. We've got all these senior judges who would be just delighted to divert their time to this where they wouldn't be willing to divert their time to doing normal work on the circuits."

But, you know, you live and learn. Thank you.

Mr. Chairman, I yield back.

Mr. HUGHES. Let me just say in a followup to the previous line of question that I think that the Administrative Office of the courts, the Director's office, has been less than forthright on this issue.

The Administrative office directive to the courts in 1982 could have been very clear. They could have indicated just exactly what I believe they understood the intent of the law to be; and that is that there was a bias in favor of separate agencies.

You folks persuaded us that separate agencies made abundant good sense. You persuaded us not to mandate separate agencies, because the net result would be that we would have separate agencies so that we could perform these functions effectively, which would not be the case if the service was performed within the probation service.

And yet, in 1982, when the memorandum went out to the courts you did not make it clear that separate agencies should be set up unless there were sufficient existing resources to perform those pretrial service functions within probation. This was never spelled out in any of the memoranda.

Therein, I think, lies the problem. Unfettered discretion was never intended. I think you know that. We never intended that. That was never the intent of this committee.

We have to deal with a lot of matters besides pretrial services. This is one of many mountains we're going to climb, and I must say that I never believed the probation officers. I never believed that they could provide the services without additional resources.

But they said they could. They came in here and they misrepresented the facts; and I'm going to review their testimony very

clearly because they have done a major job of misrepresenting the case to this Congress.

They have succeeded. Sixty four districts out of 93 affected are going to be handled through probation; 11 are "intermediate"; and we're talking about only 17 separate districts. That's not what the law says.

You know it's not what the law says. It was never the intent to end up with that result, and it's just unacceptable.

Let me just tell you, I'm also very disappointed. I asked the subcommittee's chief counsel here to get word to you and others in the Administrative Office of the courts not to send the recommendations out until after this hearing.

I can't imagine what could be gained in 3 days. I mean, they went out last week. Here it is, Tuesday. It's only 3 or 4 days ago that they went out.

Why is it that you couldn't accommodate us and hold up on those recommendations until we could sort out the problem and try and resolve it?

Judge TJOFLAT. Mr. Chairman, there wasn't any intent, let me assure you, to end-run the committee or be disrespectful in any respect of the committee.

Mr. HUGHES. Why was time of the essence? Why did you have to have them out? Why couldn't they have gone out today or tomorrow after this hearing?

Judge TJOFLAT. First, there are a lot of courts out there that were in the process of making these decisions—about whether to have separate units or to deliver pretrial services through the probation service who were in constant communication with the committee or the Administrative Office. We did not want them making those decisions on nothing at all.

Second, they were all told some time back that they'd get this information in February at the latest.

Mr. HUGHES. Would three days make a difference, three more days?

Judge TJOFLAT. I didn't know that the letters were going to be dated on the 27th; the letters were written some time back. You can't write these letters overnight, but there were a lot of these courts out there making decisions—and you know how things are—once a court takes a straw vote, it becomes a final vote; and getting something to them was essential. There were enough caveats in what has been sent to them—and, in particular, some of the courts that you're interested in—they have been told, and I've told them personally, that they may not have any funds to provide any pretrial services work if they opt to have the probation service perform the pretrial services.

Mr. HUGHES. But you told the overwhelming majority of them that you recommend probation.

Judge TJOFLAT. Please don't be misled by the number, 64 districts. Of all of the staff who are going to have to perform the work, we are talking about one quarter of the staff roughly being allotted to those 64 districts. We are not talking about very many people. The bulk of the people who are going to perform pretrial services are in the 10 pilot districts and in the gray area districts.

Mr. HUGHES. Let me get down to some more basics. Where is there any authority at all to appoint new probation officers to perform pretrial services work?

Judge TJOFLAT. Somebody else will have to answer that one.

Mr. HUGHES. Mr. Nichols?

Mr. NICHOLS. May I address that one, Mr. Chairman?

If you look at new section 3152(a), it says that on the date of enactment of the act—that was September 27, 1982—the Director of the Administrative Office shall provide for pretrial services under the supervision and direction of the Judicial Conference.

Mr. HUGHES. Yes.

Mr. NICHOLS. And it says he shall do so by contract or otherwise and to such extent and in such amounts as are provided in appropriation acts. It does not say "Money appropriated pursuant to this act." It says moneys provided in appropriations acts.

I think the statement is very clear.

Mr. HUGHES. Doesn't that language relate to contracts?

Mr. NICHOLS. No, I don't read it that way. The word "contract" is separated by "or otherwise" from the parenthetical.

Mr. HUGHES. You don't read that in toto—you know, the statute, the complete statute—when you are trying to interpret what is intended?

Mr. NICHOLS. Yes, sir, but I find nothing in the balance of the statute that contradicts the plain meaning of subsection a.

Mr. HUGHES. Did you look at the legislative history, Mr. Nichols, to try to determine the meaning of the language?

Mr. NICHOLS. I did, indeed.

Mr. HUGHES. And doesn't the legislative history make it very clear that we meant what we said—that you had the authority to designate probation officers, but you had the authority to appoint pretrial service representatives?

Mr. NICHOLS. The act established—

Mr. HUGHES. What is the significance of that difference?

Mr. NICHOLS. Having the advantage of having read the legislative history, it was clear to me that in pretrial services offices the new people were to be appointed; whereas, if the service was provided in probation offices the people were to be designated.

Mr. HUGHES. Well, I say it again. Where do you get the authority to appoint these people?

Mr. NICHOLS. Well, the authority has to be in subsection (a). Otherwise, subsection (a) can't be given effect.

Mr. HUGHES. That is absolutely nonsense. There is absolutely nothing inconsistent with providing pretrial services and complying with the statute. If you have ample probation officers, then you handle it through probation, if in fact that is the decision within that circuit.

Mr. NICHOLS. That is correct.

Mr. HUGHES. If in fact you don't have adequate existing resources, then you have to appoint new pretrial service officers, and the money is there to do that.

Mr. NICHOLS. It was not immediately permissible under the statute to establish new pretrial services officers—offices, and it is not permissible yet—that is as of March 27.

Mr. HUGHES. That is because of the 18-month trial period.

Mr. NICHOLS. That is right.

Mr. HUGHES. Do you know why we had an 18-month trial period? I have asked Judge Tjoflat that. Perhaps you can tell us. What is your view of the trial period?

Mr. NICHOLS. My view of the purpose of the period is to permit the district court to run pretrial services in their probation offices, all except the 10 demonstration districts, and find out how many people it takes, how much resources.

Mr. HUGHES. Where did you find that in the legislative history?

Mr. NICHOLS. I can't read it any other way, sir, given the effective dates.

Mr. HUGHES. Well, don't you read it that we are trying to find out whether or not we have sufficient probation officers to perform both probation services and pretrial services?

Mr. NICHOLS. That would be a part of the goal that I mentioned.

Mr. HUGHES. Wasn't that the big issue?

Mr. NICHOLS. Certainly. That 18-month period would give each district court a handle on how big a job this was and how the people had to be geographically dispersed within the districts; in other words, what resources were necessary to handle this in the probation office.

Mr. HUGHES. Let me read, if I might, from the statement of the managers.

This is talking about the 18-month period.

The Conference substantively adopts the Senate position. This delay period is, in the opinion of the conference managers, sufficient for the district courts, circuit councils, and the Administrative Office of the U.S. Courts to evaluate the needs for pretrial services and the resources available in each district. This evaluation process as described in more detail at page 8 of [the Senate report] should begin immediately upon enactment of S. 923, and should permit the United States courts to identify those districts which are capable of providing pretrial services within existing resources and those which will need additional resources and will therefore be required to utilize the special districts provision of this statute.

Now, how much clearer can you be?

Judge TJOFLAT. May I interrupt, Mr. Chairman, to say that this is the first time I have seen the issue the way you just put it.

Let's suppose district A, during the 18-month period, is overstaffed by 10 officers. It is a metropolitan court. All bail decisions are made in one location.

It just happens that when the statute passes district A is Detroit. Let's suppose Detroit is not a pilot district, and Detroit has a huge overstaffed situation in the probation service. During the 18 months all the extra probation officers are utilized to do pretrial services work.

Now, as I read the congressional intent, and they wouldn't need to establish a separate unit in order to get more officers to do that work. But as I read the intent of the Congress, they still ought to conduct their pretrial services function in a separate unit for all the reasons that the legislative history and the testimony disclose.

Mr. HUGHES. I think that is true, but that is the only place where there would be some discretion if there are adequate resources within probation.

Judge TJOFLAT. I don't think the courts ever read the legislative history to mean that only those courts that found themselves short-handed after 18 months would petition for a separate unit.

Mr. HUGHES. I don't think the courts read the legislative history.

Judge TJOFLAT. That would mean that you have separate units in places like Montana and no separate unit in a place like Detroit, MI.

Mr. HUGHES. Come on, Judge.

Judge TJOFLAT. Well—

Mr. HUGHES. You know, it is really a very simple matter. We have made it much more complicated than it should be.

The fact of the matter is you have walked away from the statute, pure and simple. It was never the intent to give that unfettered discretion to the courts to decide whether or not they would provide pretrial services as a separate agency or in probation.

The only test was whether they had the resources. If they had the resources within some particular district to do it, then they could do it. If they didn't have the resources, then there was to be a separate agency. Pure and simple.

Mr. Nichols, you have made it so very complicated. It is really very uncomplicated. If you don't have the resources to do it, you can't do it, my friend. It is as simple as that.

There is no authority to appoint new probation officers to handle pretrial services. There is no statutory authority, and that is the significance, as you must well know by this time, of the "appoint" versus "designate" language in the bill, and it surely is spelled out very clearly in the legislative history that that was always our intent.

You know, it is just an instance where, unfortunately, the courts are walking away from what I think is the clear intent of the law, and I think that the recommendations that just went out absolutely flaunt the law.

In some districts where you are requesting 100 percent, almost 100 percent new personnel, the suggestion of the report is, well, they are already performing 95, 96 percent of the work, and you are requesting all new personnel.

North Alabama, 98 people.

Judge TJOFLAT. Northern Alabama won't get one officer under any circumstances.

Now, I will explain northern Alabama. Northern Alabama—and that is why I say our data is very sketchy and very spotty, and so the task is not easy to know where to put people—they report to our staff in Washington that they saw some 98 percent of the people, and that is the source of some of the testimony, or urging, during the legislative process, by probation officers who said we can do the job without any extra help.

Now, what I think the truth of the matter is that in northern Alabama without any extra officers and with a probation staff that was not in an overstaffed condition, they did see 98 percent of the people. But the quality of the investigations conducted in those situations, the fidelity that those officers paid to the law, as contemplated by the Congress in passing the statute, in my judgment was probably pretty shoddy.

But we can't tell northern Alabama that because we don't have the empirical evidence to make that kind of a statement.

So we will start off by telling northern Alabama that they don't get one body. They don't get an officer, they don't get a supporting person, and we will wait and see. In due time the court is going to say we can't do the work with the officers we have for the following reasons, et cetera, et cetera, and our data which showed that we were seeing 98 percent of the cases is not the best.

Mr. HUGHES. So you are saying you have to look at the quality of the investigations being run, am I correct?

Judge TJOFLAT. Well, the court can keep data, make notations that you see every case. What does that mean, you see every defendant? Or that a recommendation to the bail officer is made in every case? Well, what kind of recommendation is made in every case?

Mr. HUGHES. I understand. I mean, you could be going through the motions and not accomplishing the objective of the statute.

Judge TJOFLAT. In the short time that we have had to—we have had 18 months in which to crank up the Pretrial Services Program in 83 districts from scratch. That means educate the judges, the probation officers, the prosecutors, the magistrates, the defense counsel, educate them in many areas in doing something that is absolutely foreign to the practice of criminal law in those jurisdictions.

Many of those jurisdictions follow the old state bail system of just looking on the jail wall to find out how much bond should the guy put up from the fellow across the street.

We not only had to infuse the notion of pretrial services in 83 of these districts, but we had to train these people, and we have had to collect some data, and that is an enormous job in the Judiciary, in a diverse country like this one, to perform in 18 months.

So I am back to my beginning point; that is, that this data is the best that could be obtained under the circumstances, but don't be misled by it. And if northern Alabama tells us they are seeing 98 percent of the cases and they are putting that out as full compliance with the law, they don't need any officers and they won't get any.

Mr. HUGHES. Sounds like we have a lot of different entities within themselves throughout the country. We have got judges who don't like pretrial services. They don't want to implement the program. They walk away from it. A judge in Hawaii absolutely refuses to comply with the pretrial services law.

How do we deal with a situation like that?

Right now we feel like aggrieved parties. What is our recourse when we feel that the courts have walked away from what we thought was the clear intent of the law? What remedy do we have at this point?

Judge TJOFLAT. Well, in the first place, what we are trying to do is to carry out—and we—I am talking about the Probation Committee, and in the Judicial Conference, and the Administrative Office—do the best we can to get pretrial services implemented in every district in the United States.

Mr. HUGHES. I don't want pretrial services implemented the way it has been implemented because it doesn't comply with the law.

Judge TJOFLAT. I am talking about being implemented in the way in which the statute comprehends it to be implemented.

Mr. HUGHES. Sixty-four districts using probation is not the way I envisioned the statute would be implemented.

Judge TJOFLAT. I understand that, Mr. Chairman, but we are talking about doing an enormous task in a very short period of time, and you are a lawyer, and you know how lawyers are about changing their ways of doing business.

Mr. HUGHES. I am finding out how judges are.

Judge TJOFLAT. Well, judges were lawyers at one time.

Mr. HUGHES. They seem to forget that from time to time.

Judge TJOFLAT. Well, sometimes they do and sometimes they don't, but the fact is, we all came out of the same place.

Mr. HUGHES. Well, you never envisioned that it would be implemented in this fashion, Judge. I mean, come on, be candid with us. Did you ever think that the tail would be wagging the dog?

Here we have the probation officers who sold us a bill of goods.

Judge TJOFLAT. In some districts.

Mr. HUGHES. And now end up administering a program which they are really now too deeply into.

Judge TJOFLAT. I knew that in some districts—

Mr. HUGHES. Now they are serving two masters. We are going to have the worst of all worlds. That's the picture you painted to us. I remember all those graphs, charts, and arguments that persuaded us beyond a reasonable doubt that pretrial services should be performed by independent agencies.

Now, look what we have ended up with.

Judge TJOFLAT. You have put about 13 questions to me at one time, and now I know how a witness with 13 questions all rolled up in one feels.

Mr. HUGHES. Let's just take it from a very simple question.

You convinced us, Judge, that we should have separate agencies. You convinced us, and you are not delivering.

Judge TJOFLAT. We said that we thought that the pretrial services, especially in metropolitan courts, in courts with sizable case-loads, ought to be performed in separate agencies because it is difficult to serve two masters.

I agree with you. We start with that proposition. We got to the second proposition, which is this law was passed 17 months ago, and we had 83 courts in the United States, many of which had never heard of pretrial services, period.

In some courts, judges and parajudicial personnel, prosecutors, even defense counsel had no notion of the amount of offenders who were being detained prior to trial. They had no idea of the number of fugitives in their courts. They had no idea of the crime on bail being committed by people awaiting trial.

That is the whole reason that the Congress passed title II of the Speedy Trial Act, was to learn a lot of these things.

And to implement this program under this statute—with all due respect—which was put together in conference and the legislative history written without, as far as I am concerned, much consultation with the courts—but I am not complaining about that—but to do all of that in the short timespan that we had to deal with it is not an easy task.

Mr. HUGHES. I understand that.

Judge TJOFLAT. And what we are saying here today is not what pretrial services is going to look like 18 months from now.

Mr. HUGHES. I understand that.

Judge TJOFLAT. And we also looked at the proposition that courts may say we don't want a separate unit, but by June they may realize that they have got to have a separate pretrial services unit if they are going to efficiently do the job that you mandate.

Mr. HUGHES. Well, I understand that it is not an easy task, and I understand that we have a lot of entities that feel that they have enough problems on their hands without absorbing new problems.

I know there are a lot of people who are not particularly committed to pretrial services who are going to have to administer the program. I understand all of that.

But it seems to me that you have made it unduly complicated—not you personally, but the Administrative Office has made it unduly complicated by not being right up front with the courts and indicating to them that the law is that we are going to put in place pretrial services in all of the districts throughout the country and that if we have adequate resources you can choose to handle it within the existing probation authority, but if you don't have adequate resources, you are going to have to set up a separate pretrial services agency.

That was the mandate of the statute. You have never made that clear to the courts, and therein is part of your problem.

Now how to deal with some of these cantankerous souls out there who feel that they are independent of all authority—that their authority apparently comes from heaven is something that bothers me also—and maybe what we need to do is look at more centralized authority to deal with those situations, like in Hawaii.

Judge TJOFLAT. Mr. Chairman, I don't know the answer to that somewhat rhetorical question. All I can say is that I personally have been on the telephone with some of the chief judges of the courts you are concerned with about this problem.

I could tell you in black letter that they have been told, and they understand, that they may not have a dime when it comes to the 27th of March to hire any officers to place in their probation departments to carry out pretrial services functions.

They understand in many of these courts that the only conceivable way to deliver the program is in a separate unit. In most of these problem courts it has not been a matter of a lack of communication. They understand.

Mr. HUGHES. Well, it seems to me that if I were to receive the letter that just went out on the 27th with these recommendations to set up within probation to handle pretrial service functions, I would be kind of confused because what you are doing is you are giving them an out.

You are suggesting in 64 instances, at least, in those instances, the courts feel—at least the Administrative Office feels—that they should handle those functions within probation.

Judge TJOFLAT. At the present time we would be more efficient in that area, and as I say, we are talking about just a small portion of the overall staff requirements for those 64 courts. Those are

courts like the northern district of Mississippi or the southern district of Georgia, where they go all over the place.

Mr. HUGHES. Aside from the authority that is given in the context of this statute for probation officers to perform pretrial service functions under the certain circumstances set forth, do probation offices have any authority, statutory authority, to provide that function?

Judge TJOFLAT. Which function?

Mr. HUGHES. The pretrial services function, aside from the authority—

Judge TJOFLAT. They don't have any.

Mr. HUGHES [continuing]. That is provided in the context of this statute.

Judge TJOFLAT. They don't have any express authority. One could build an argument that a district judge has got some inherent authority to ask a probation officer to perform pretrial services work on the theory that the individual may well become a convicted person before the court and thereafter under the court's jurisdiction for probation purposes and that in a given case that individual needs to be seen by a probation officer before an adjudication occurs.

Mr. HUGHES. Well, I suppose you could make that argument, but I don't—

Judge TJOFLAT. Because of threats to the community or some such thing.

Mr. HUGHES. I don't find any express authority for probation officers—

Judge TJOFLAT. There isn't any.

Mr. HUGHES [continuing]. To do pretrial services work if they don't already have adequate resources, and I think you are on really tenuous ground when you start implying it from other services.

So I see a number of problems developing. I don't see statutory authority for probation officers to do pretrial service work except in limited situations where there are adequate resources. I don't see statutory authority to authorize appropriations for that work except in those limited circumstances where—

Judge TJOFLAT. Mr. Chairman, during the 18-month period, or even before that, when it became apparent that some legislation was going to pass, a lot of courts voluntarily undertook the assignment of probation officers to do pretrial services work. I would just say that probably the question of authority didn't arise.

Mr. HUGHES. Well, it is with us now, and you have a situation where, in my judgment, there is no authority to appoint and hire probation officers to handle pretrial services work, and no matter how much stretching and straining and argument you make, there is no such authority.

It was never intended. This committee never intended to give that authority, and the statute was written holding back that authority for the reasons we have gone into ad nauseam at this point.

The gentleman from Michigan.

Mr. SAWYER. Just an observation on your colloquy with the chairman about judges being lawyers.

I, years ago, attended a seminar function where Justice Potter Stewart was the principal speaker, and he told a story about one of his children when they were young. They were going out West on one of these Vista Dome trains, and his kids were sitting up a seat or two ahead of him and his wife, and the party that they were sitting with asked: "What does your father do?" And his son said, "Well," he said, "He used to be a lawyer, but now he is on the Supreme Court." [Laughter.]

I yield back.

Mr. HUGHES. That is a good way to end a hearing.

Thank you, Judge, Mr. Foley. I appreciate your coming in.

As I have indicated, I regret that it is along this track because we are going to be dealing with a lot of other matters.

Judge TJOFLAT. Well, we will continue, however, track or no track, to keep you as apprised as we can of what is going on.

Mr. HUGHES. Thank you.

The hearing stands adjourned.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

ADDITIONAL MATERIAL

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

October 14, 1982

JOSEPH F. SPANIOLO, JR.
DEPUTY DIRECTOR

MEMORANDUM TO ALL: CHIEF JUDGES, UNITED STATES COURTS OF APPEALS
 CHIEF JUDGES, UNITED STATES DISTRICT COURTS
 JUDGES, UNITED STATES DISTRICT COURTS
 UNITED STATES MAGISTRATES
 CIRCUIT EXECUTIVES
 FEDERAL PUBLIC/COMMUNITY DEFENDERS
 DISTRICT COURT EXECUTIVES
 CLERKS, UNITED STATES COURTS OF APPEALS
 CLERKS, UNITED STATES DISTRICT COURTS
 CHIEF UNITED STATES PROBATION OFFICERS
 CHIEF UNITED STATES PRETRIAL SERVICES OFFICERS

SUBJECT: Pretrial Services Act of 1982

Enclosed for your information is a copy of the "Enrolled Bill" print of S. 923 enacted as Public Law No. 97-267, The Pretrial Services Act of 1982, when it was signed by President Reagan on September 27, 1982. Copies of the Senate, House, Conference Reports, as well as Congressional floor debates and hearing records are available upon request.

The Act is effective immediately in all districts and for the eighteen (18) months following enactment, no extra resources will be available except in the 10 demonstration districts.

The public law requires the Director of the Administrative Office under the supervision and direction of the Judicial Conference to provide directly, or by contract or otherwise, for the establishment of pretrial services in all judicial districts other than the District of Columbia.

Pretrial services functions include the following:

- (1) Prepare verified prebail reports for Judicial officers on all individuals charged with an offense prior to the release hearing;
- (2) Review and modify bail reports and recommendations;
- (3) Supervise persons released to its custody;
- (4) Operate or contract for facilities for the custody and care of persons released under this chapter including temporary residence, treatment for alcohol and drug abuse and counseling;

Page 2

(5) Inform the court and U. S. attorney of all violations of conditions of release or danger to any other person or the community;

(6) Serve as coordinator for other local agencies which can provide similar services;

(7) Assist persons released in securing supportive services;

(8) Prepare in cooperation with the U.S. marshal and the U. S. attorney pretrial detention reports;

(9) Collect information, evaluate bail activities and prepare reports to improve the bail process; and

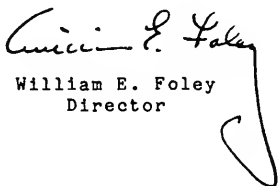
(10) Provide reports to U.S. attorneys for diversion purposes and supervise persons diverted under an agreement with the U.S. attorney.

The Act provides that, for an 18-month period following enactment, any pretrial services beyond the existing ten demonstration districts are to be provided under the supervision of the chief probation officers, utilizing existing probation resources, with no authority for additional appropriations. Section 3152(b) and (c) of the Act also provide that after the 18-month period pretrial services may be provided under the supervision of chief pretrial services officers, who must be individuals other than those serving as probation officers under the authority of Section 3654 of Title 18. When the district court and circuit council recommend the establishment of pretrial services under Section 3152(b), authority is provided for additional appropriations to support pretrial services. In those districts where pretrial services are established in probation offices, staffing needs will be met through the usual budget process. The Act also specifically authorizes appropriations necessary to continue the ten demonstration districts in effect prior to the date of enactment, for a period ending 18-months thereafter.

The Congress established the 18-month delay to provide sufficient time for the judiciary to evaluate the needs for pretrial services and the resources available in each district. The evaluation process will begin immediately. The evaluation will permit the Judiciary to identify those districts which wish to establish pretrial services under section 3152(b).

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The Administrative Office will provide each district court with the information and technical assistance necessary to establish Pretrial Services.

A handwritten signature in cursive script, reading "William E. Foley". The signature is written in dark ink and is positioned above the printed name and title.

William E. Foley
Director

United States Court of Appeals
Eleventh Judicial Circuit

Gerald Bard Tjoflat
Circuit Judge
Jacksonville, Florida 32201

October 27, 1983

MEMORANDUM TO: Chief Judges, United States Courts of Appeals
Chief Judges, United States District Courts

In my capacity as Chairman of the Judicial Conference's Committee on the Administration of the Probation System, I write to raise with you a serious question as to who shall provide pretrial services -- the court's probation officers or pretrial services officers in a separate office of the court under the Pretrial Services Act of 1982 (Public Law 97-267, September 27, 1982). The appropriations for this new fiscal year include provision for additional positions for this function, and each district court must address this question by March 27, 1984. For your information I am enclosing copies of the Act and the reports of the House-Senate Conference Committee and the Senate Judiciary Committee on the bill.

The Act requires the Director of the Administrative Office, under the direction and supervision of the Judicial Conference, to provide pretrial services in each judicial district (except the District of Columbia which has a local pretrial services program). Pretrial services include: (1) the preparation, prior to the bail hearing, of a verified report on each individual charged with an offense (other than a petty offense); and (2) the supervision, when ordered by the court, of a defendant released on bail. The Congressional mandate of pretrial services for each judicial district and for each defendant goes beyond the recommendations the Judicial Conference made to the Congress while the legislation was pending. Nonetheless, the mandate is clear.

The answer to the question of who shall provide pretrial services is, however, far from clear. Each court must choose the form of pretrial services organization that best suits its particular needs. In metropolitan districts the criminal caseload may well justify staff dedicated solely to pretrial services. In smaller districts the criminal caseload, geographical dispersion of judicial officers and court locations, and the deployment of supporting personnel may counsel against a separate unit. Services may also be provided, to some extent, through contractual arrangements.

The Act established a transitional period -- until March 27, 1984 -- during which the ten pilot districts established under the Speedy Trial Act of 1974 will continue to operate under their present arrangements and, in the other districts, probation offices will furnish pretrial services with existing personnel (see the House-Senate Conference Report). Thereafter, each district court must decide whether: (1) to continue to provide this service through its probation office; or (2) to establish a separate pretrial services unit, with the concurrence of the pertinent circuit council. The individual courts, with the assistance of the Administrative Office, are now also evaluating whether additional resources may be necessary to deliver these services on a permanent basis.

The Act expressly authorizes the appropriation of funds for the operation of separate pretrial services units. There is no express provision in the Act for additional funds for probation offices to provide these services. However, in his October 14, 1982, memorandum to you, the Director of the Administrative Office of the United States Courts has taken the position that the staffing needs for probation offices will be met through the general appropriation authority for the probation service.

The Judiciary's budget request for the fiscal year commencing on October 1 included a request for 313 positions (both officer and clerical) for pretrial services beginning on March 27, 1984, in addition to the positions now allocated to the ten pilot districts. The request did not identify these positions with either type of administrative pretrial services structure since the individual courts had not yet made their statutory determinations as to structure.

The Appropriations Committees of the Congress have each approved 200 of the additional pretrial services positions requested and 63 of the 73 additional positions requested for probation offices generally. Both Houses have passed the bill. The Committees' reports include the following comments:

HOUSE: "The Committee has also approved 200 additional positions for the pretrial services program with the recommendation that the Probation Service absorb as much of this function with current personnel as is reasonably possible. . . ."

SENATE: "However, the committee shares the concern of the House that the Probation Service absorb as much of this function as possible within the current staffing levels. Accordingly, the Committee directs the Administrative Office to report by February 1, 1984, on the implementation of the expanded pretrial services program, with emphasis on the coordination of activities between it and the Probation Service."

- 3 -

You should also be advised that the House Judiciary Subcommittee on Crime held hearings on June 1, 1983, on the implementation of the pretrial services program at which I testified that the statute clearly gives each district court the option of providing pretrial services either through its probation office or, with the approval of the circuit council, through a separate pretrial services unit. The Subcommittee took exception to our stated intention to allocate additional staff to probation offices for the performance of pretrial services, citing the following language from the House-Senate Conference Report:

This [18-month] delay period [i.e., until March 27, 1984] is, in the opinion of the conference managers, sufficient for the district courts, circuit judicial council, and the Administrative Office of the U.S. Courts to evaluate needs for pretrial services and the resources available in each district. This evaluation process . . . should begin immediately upon enactment of [the statute], and should permit the United States courts to identify those districts which are capable of providing pretrial services within existing [probation service] resources and those which will need additional resources and will therefore be required to establish a separate pretrial services unit under the supervision of a chief pretrial services officer. (Emphasis added.)

The decision is yours to make. The Administrative Office will contact each chief district judge on its evaluation of his district's needs, with a recommendation for an appropriate organizational structure. We will continue to seek the resources from the Congress that are necessary to ensure that pretrial services are properly provided.

Sincerely,



cc: Circuit Executives
District Executives

PUBLIC LAW 97-267—SEPT. 27, 1982

PRETRIAL SERVICES ACT OF 1982

Public Law 97-267
97th Congress

An Act

Sept. 27, 1982
[S. 923]

To amend chapter 207 of title 18, United States Code, relating to pretrial services.

Pretrial Services
Act of 1982.
18 USC 3141
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pretrial Services Act of 1982".

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services

"(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer selected under subsection (c) of this section.

"(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title."

SEC. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services

"(a)(1) With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code."

Position
requirements
and
compensation
rate.

18 USC 3654.

"(2) The chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

"(b) The chief probation officer in all districts in which pretrial services are established under section 3152(a) of this title shall designate personnel appointed under chapter 231 of this title to perform pretrial services under this chapter.

"(c)(1) Except as provided in paragraph (2) of this subsection, information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of a bail determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information made confidential by paragraph (1) of this subsection. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(4) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information made confidential under paragraph (1) of this subsection is not admissible on the issue of guilt in a criminal judicial proceeding unless such proceeding is a prosecution for a crime committed in the course of obtaining pretrial release or a prosecution for failure to appear for the criminal judicial proceeding with respect to which pretrial services were provided."

SEC. 4. Section 3154 of title 18, United States Code, is amended to read as follows:

"§ 3154. Functions and powers relating to pretrial services

"Pretrial services functions shall include the following:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and recommend appropriate release conditions for such individual.

"(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.

"(3) Supervise persons released into its custody under this chapter.

18 USC 3651
et seq.

Information
confidentiality.

Regulations.

18 USC 3146,
3147.

"(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

"(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

"(10) To the extent provided for in an agreement between a chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

"(12) Perform such other functions as specified under this chapter."

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28 a report on the administration and operation of the pretrial services for the previous year."

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended by striking out the item relating to section 3152 and all that follows through the item relating to section 3155 and inserting in lieu thereof the following:

18 USC app.

Report to
congressional
committee.
28 USC 604.

"3152. Establishment of pretrial services.

"3153. Organization and administration of pretrial services.

"3154. Functions and powers relating to pretrial services.

"3155. Annual reports."

SEC. 7. Section 604(a) of title 28, United States Code, is amended by—

- (1) striking out "agencies" in paragraph (9);
- (2) striking out "for pretrial services agencies" and inserting in lieu thereof "providing pretrial services" in paragraph (10);
- (3) by striking out "pretrial service agencies" in paragraph (11) and inserting "offices providing pretrial services" in lieu thereof; and
- (4) by striking out "pretrial services agencies" in paragraph (12) and inserting "offices providing pretrial services" in lieu thereof.

SEC. 8. During the period beginning on the date of enactment of this Act and ending eighteen months after the date of the enactment of this Act, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under chapter 207 of title 18 of the United States Code.

18 USC 3152
note.

Ante, p. 1136.

SEC. 9. (a) There are authorized to be appropriated, for the fiscal year ending September 30, 1984, and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the functions and powers of pretrial services established under section 3152(b) of title 18, United States Code.

18 USC 3141
et seq.

Appropriation
authorization.
18 USC 3152
note.

(b) There are authorized to be appropriated for the fiscal year ending September 30, 1983, and the fiscal year ending September 30, 1984, such sums as may be necessary to carry out the functions and powers of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act.

Approved September 27, 1982.

LEGISLATIVE HISTORY—S. 923 (H.R. 3481):

HOUSE REPORTS: No. 97-56 accompanying H.R. 3481 (Comm. on the Judiciary) and No. 97-792 (Comm. of Conference).

SENATE REPORT No. 97-77 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 127 (1981): June 18, considered and passed Senate.

Vol. 128 (1982): May 11, H.R. 3481 considered and passed House; proceedings vacated and S. 923, amended, passed in lieu.

Aug. 20, Senate agreed to conference report.

Sept. 15, House agreed to conference report.

PRETRIAL SERVICES ACT OF 1982

SEPTEMBER 8, 1982.—Ordered to be printed

Mr. HUGHES, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 923]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 923) to amend chapter 207 of title 18, United States Code, relating to pretrial services, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Pretrial Services Act of 1982".

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services

"(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer selected under subsection (c) of this section.

"(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States

district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title."

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"(2) The chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

"(b) The chief probation officer in all districts in which pretrial services are established under section 3152(a) of this title shall designate personnel appointed under chapter 231 of this title to perform pretrial services under this chapter.

"(c)(1) Except as provided in paragraph (2) of this subsection, information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of a bail determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information made confidential by paragraph (1) of this subsection. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(4) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information made confidential under paragraph (1) of this subsection is not admissible on the issue of guilt in a criminal judicial proceeding unless such proceeding is a prosecution for a crime committed in the course of obtaining pretrial release or a prosecution for failure to appear for the criminal judicial proceeding with respect to which pretrial services were provided."

SEC. 4. Section 3154 of title 18, United States Code, is amended to read as follows:

"§ 3154. Functions and powers relating to pretrial services

"Pretrial services functions shall include the following:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and recommend appropriate release conditions for such individual.

"(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.

"(3) Supervise persons released into its custody under this chapter.

"(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

"(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

"(10) To the extent provided for in an agreement between a chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

"(12) Perform such other functions as specified under this chapter."

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28 a report on the administration and operation of the pretrial services for the previous year."

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended by striking out the item relating to section 3152 and all that follows through the item relating to section 3155 and inserting in lieu thereof the following:

"3152. Establishment of pretrial services.

"3153. Organization and administration of pretrial services.

"3154. Functions and powers relating to pretrial services.

"3155. Annual reports."

SEC. 7. Section 604(a) of title 28, United States Code, is amended by—

- (1) striking out "agencies" in paragraph (9);
- (2) striking out "for pretrial services agencies" and inserting in lieu thereof "providing pretrial services" in paragraph (10);
- (3) striking out "pretrial service agencies" in paragraph (11) and inserting "offices providing pretrial services" in lieu thereof; and
- (4) striking out "pretrial services agencies" in paragraph (12) and inserting "offices providing pretrial services" in lieu thereof.

SEC. 8. During the period beginning on the date of enactment of this Act and ending eighteen months after the date of the enactment of this Act, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under chapter 207 of title 18 of the United States Code.

SEC. 9. (a) There are authorized to be appropriated, for the fiscal year ending September 30, 1984, and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the functions and powers of pretrial services established under section 3152(b) of title 18, United States Code.

(b) There are authorized to be appropriated for the fiscal year ending September 30, 1983, and the fiscal year ending September 30, 1984, such sums as may be necessary to carry out the functions and powers of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act.

And the House agree to the same.

PETER W. RODINO,
BILL HUGHES,
JOHN CONYERS,
ROBERT W. KASTENMEIER,
DAN GLICKMAN,
ROBERT MCCLORY,
HAROLD S. SAWYER,
HAMILTON FISH, Jr.,

Managers on the Part of the House.

STROM THURMOND,
CHARLES MCC. MATHIAS,
PAUL LAXALT,
JOSEPH R. BIDEN,
PATRICK J. LEAHY,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 923) to amend chapter 207 of title 18, United States Code, relating to pretrial services, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The Senate bill provides for the establishment of pretrial services in each judicial district. The House amendment provides for the establishment of pretrial services in those districts with respect to which the district court and the circuit council have so recommended.

The conference substitute adopts the Senate position.

The Senate bill provides that, for an 18-month period following enactment of the bill, any pretrial services beyond the existing demonstration districts—which are specifically authorized to continue their operation during the 18-month period—are to be provided under the supervision of the chief probation officers, utilizing existing resources, with no authority for additional appropriations. After this 18-month period, pretrial services may also be provided under the supervision of chief pretrial services officers, who must be individuals other than those serving as probation officers under the authority of section 3654 of title 18. When the district court and circuit council recommended the establishment of pretrial services in these special districts, authority is provided for additional appropriations to support pretrial services. The Senate bill also specifically authorizes appropriations necessary to continue the demonstration projects in effect prior to the date of enactment, for a period ending 18 months after the date of enactment.

The House amendment provides that, based on the recommendation of the district court and the circuit council, pretrial services may be provided under the supervision of either chief probation officers or chief pretrial services officers. There is no delay period in the availability of either type of pretrial services supervision, and the authority for appropriations extends to both types of management.

The conference substitute adopts the Senate position. This delay period is, in the opinion of the conference managers, sufficient for the district courts, circuit councils, and the Administrative Office of the U.S. Courts to evaluate the needs for pretrial services and the resources available in each district. This evaluation process, as described in more detail at page 10 of Senate Report 97-77, should begin immediately upon enactment of S. 923, and should permit the United States courts to identify those districts which are capable of providing pretrial services within existing resources and those which will need additional resources and will therefore be required to utilize the special districts provision of this statute.⁴

The Senate bill provides that chief pretrial services officers and chief probation officers shall appoint such other personnel as required, and that the position requirements and rate of compensation of the chief pretrial services officer, the chief probation officer, and other personnel are to be established by the Director of the Administrative Office. The House amendment provides for the chief pretrial services officer to appoint additional personnel, and for position requirements and compensation of these persons to be fixed by the Director of the Administrative Office.

The conference substitute provides for the appointment of additional personnel by the chief pretrial services officer, and authorizes the chief probation officer to designate existing probation personnel to perform pretrial services functions. Authority for the chief probation officer to "designate", rather than "appoint", is necessary to remain consistent with the determination of the Managers that additional personnel will be appointed only in special districts under the supervision of chief pretrial services officers. Similarly, since the position requirements and compensation of probation officers and other probation support personnel are provided for in chapter 231 of title 18, reference to them here is deleted.

Both the Senate and House bills provide for the confidentiality of information collected in the course of providing pretrial services functions. The conference substitute adopts the position of both bills, with language taken from both bills. The conference substitute clarifies that the protected information is that "obtained in the course of performing pretrial services functions. . . ." This carries out the purpose of protecting the relationship between the pretrial services officer and the particular defendant. Defendants may be reluctant to cooperate with pretrial services officers unless assured of the confidentiality of the information they reveal to the officers. The courts, in turn, would receive only incomplete information. The conference substitute also makes clear that the information is protected unless it is to be revealed for the purposes of a bail hearing. Hearings to determine whether a defendant's bail should be revoked are, of course, considered bail hearings.

The conference substitute requires the Director to issue regulations establishing the confidentiality of the information referred to above, and not just information contained in pretrial services files. Otherwise, as suggested above, the purpose of furthering the relationship between the pretrial services officer and the defendant, and thus of gathering the most complete information for the court, would be threatened.

Finally, the conference substitute provides that such information is not admissible on the issue of guilt in a criminal judicial proceeding unless the proceeding is for a crime committed in the course of obtaining pretrial release, or for the defendant's failure to appear on the case for which pretrial services were provided. In this case, the conference substitute adopts a combination of exceptions set forth in the Senate and the House bills. As described above, the limitation on admissibility is necessary to further the objective of ensuring that the court receives the most complete information possible. However, the exceptions are provided to ensure that defendants cannot attempt to take advantage of the pretrial services process and then shield themselves behind the guarantee of confidentiality.

Both the Senate and the House bills set forth the functions of providers of pretrial services, including collecting, verifying, and reporting to the court information about the defendant's pretrial release. The House bill also requires providers of pretrial services to inform the court if the release of the defendant may pose a danger to any other person or the community.

The conference substitute adopts the House position.

Both the Senate and the House bills require the providers of pretrial services to inform the court and the United States attorney of all apparent violations of conditions of release, and arrests of persons under their supervision or released to their custody. The House bill also requires providers of pretrial services to inform the court and United States attorney that the person may come to pose a danger to any other person or the community.

The conference substitute adopts the House position.

PETER W. RODINO,
BILL HUGHES,
JOHN CONYERS,
ROBERT W. KASTENMEIER,
DAN GLICKMAN,
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Managers on the Part of the Senate.

Calendar No. 102

97TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 97-77

PRETRIAL SERVICES ACT OF 1981

MAY 15, 1981.—Ordered to be printed

Filed under authority of the order of the Senate of May 13 (legislative day,
April 27), 1981Mr. BIDEN, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 923]

The Committee on the Judiciary, to which was referred the bill (S. 923) to provide pretrial services in each Federal District to assist judicial officers in making appropriate pretrial release decisions and to supervise and monitor conditions of release, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

I. PURPOSE OF THE BILL

The Pretrial Services Act of 1981 establishes pretrial services for defendants in every Federal judicial district. The most important functions of pretrial services are (1) compiling and verifying personal background information on individuals charged with violation of Federal criminal law for use by judges and magistrates in making bail decisions; (2) monitoring and supervising individuals released on bail; and (3) reporting to the court all violations of the conditions of release and recommending necessary modifications in conditions of release. Demonstration pretrial services programs in 10 representative judicial districts have proven that the programs will meet the objectives of reducing the number of new crimes committed by persons released on bail; reducing the number of defendants who fail to appear for trial; reducing the number of defendants unnecessarily confined during the pretrial detention period; increasing the use of nonfinancial terms or conditions of release; and reducing the cost of unnecessary pretrial detention.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Origin of Pretrial Services

In 1974 Congress enacted the Speedy Trial Act in response to the alarming number of defendants who committed crimes while on release awaiting trial. The Speedy Trial Act had two essential elements. Title I established a short period of time before trial and Title II created Pretrial Services Agencies to implement the Bail Reform Act of 1966.

Defendants in the Federal system are released prior to trial pursuant to the Bail Reform Act of 1966. Although there are no statistics on the operation of the Bail Reform Act outside the District of Columbia, it is common knowledge that many Federal judges are reluctant to release defendants pursuant to the act and all too often when they do, defendants either commit subsequent crimes or become fugitives. This situation exists because district courts do not have personnel to conduct interviews of arrested defendants so that judges can make informed decisions as to whether to release defendants. Furthermore, outside the District of Columbia, there is no agency charged with supervising bail conditions for defendants released prior to trial. Therefore, even if a defendant is released on his own recognizance prior to trial on a condition set by the judge, for example that the defendant refrain from associating with certain persons or that he not use narcotic drugs, there is no agency charged with assuring compliance with the judge's order.

Judges without sufficient information on a defendant's eligibility for pretrial release either detain the defendant until trial or guess at the defendant's likelihood to remain in the jurisdiction. With regard to the former, it must be noted that pretrial detention is an enormous fiscal burden upon the judicial system. It costs approximately \$37.00 a day for the Government to detain a defendant.

If the court takes the latter course, and guesses at the defendant's likelihood of flight, it risks releasing a defendant who will flee the jurisdiction. Indeed, recent statistics compiled in a report by the Administrative Office of the United States Courts suggest that the number of fugitives has increased dramatically in recent years and that fugitive defendants may be one of the most significant causes of delay in the Federal courts. According to the report, "Nationally, 57 percent of the criminal cases pending one year or more involved a fugitive defendant." The trend in the number of fugitives in the Federal courts is reflected in the report's finding that in 1968 there were only 1,495 cases pending for more than a year involving a fugitive defendant while in 1971 there were 4,124 such cases.

Title II of the Speedy Trial Act of 1974 directed the Administrative Office of the U.S. Courts to set up demonstration pretrial services agencies in ten federal judicial districts. The primary functions of the agencies are to (1) collect, verify and report promptly to the judicial officer all information pertaining to the pretrial release of persons charged with an offense and recommended appropriate release

conditions; (2) review and modify the reports and recommendations; (3) supervise and provide supportive services to persons released in their custody; and (4) inform the court of violations of conditions of release.

The ten demonstration districts were chosen by the Chief Justice, upon consultation with the Attorney General, on the basis of the number of criminal cases in the district, the percentage of defendants detained before trial, the incidence of crime charged to persons released prior to trial, and the resources available.

Five of the demonstration agencies were administered by the Division of Probation of the Administrative Office of the United States Courts. In those districts the chief federal probation officer served as the pretrial services officer. Pretrial services agencies administered by the Division of Probation were established in the districts of Central California (Los Angeles), Northern Georgia (Atlanta), Northern Illinois (Chicago), Southern New York (New York City) and Northern Texas (Dallas).

In the remaining five demonstration districts pretrial services agencies were administered by a Board of Trustees consisting of seven members appointed by the Chief Judge of the district; a U.S. District court judge, the United States attorney, two members of the defense bar, the chief probation officer and two representatives of community organizations. The agencies were supervised by a chief pretrial services officer appointed by the Board of Trustees. Pretrial services agencies administered by a Board of Trustees were established in the districts of Western Missouri (Kansas City), Eastern New York (Brooklyn), Eastern Pennsylvania (Philadelphia), Maryland (Baltimore), and Eastern Michigan (Detroit).

Evaluation of the Demonstration Pretrial Services Agencies

Under the Speedy Trial Act of 1974 the Director of the Administrative Office of the U.S. Courts is required to report annually to the Congress on the accomplishments of the demonstration pretrial services agencies with particular attention to their effectiveness in (1) reducing crime committed by persons on pretrial release; (2) reducing the volume and cost of unnecessary pretrial detention; and (3) their general effectiveness in improving the bail process. In addition, the fourth and final report issued by the Director was required to include a recommendation concerning the expansion of pretrial services agencies beyond the ten demonstration districts and compare the performance of the agencies administered by the Division of Probation with the agencies administered by the Board of Trustees.

The Director of the Administrative Office of the U.S. Courts released the Fourth Annual Report on the Implementation of Title II of the Speedy Trial Act on June 29, 1979. The following table reflects the findings of the Administrative Office of the U.S. Courts on the performance of the two types of districts from the first reporting period (1975-76) to the last reporting period (1977-78):

In percent]

	1st period	Last period
1. Rates of prebail reports submitted:		
Boards.....	64.4	87.2
Probation.....	70.5	74.5
2. Rates of bail recommendations submitted:		
Boards.....	59.9	79.6
Probation.....	59.8	60.9
3. Reduction in rearrest rates:		
Boards.....	7.0	3.4
Probation.....	9.1	4.5
4. Reduction in failure to appear rates:		
Boards.....	3.8	3.4
Probation.....	6.8	2.4
5. Reduction in detention (indicated by initial release rates):		
Boards.....	71.9	76.9
Probation.....	65.1	65.5
6. Improvement in the operation of the chapter on release (indicated by the use of nonfinancial conditions of release):		
Boards.....	63.7	77.5
Probation.....	58.1	63.1

At the request of the Probation Committee of the Judicial Conference the Federal Judicial Center also issued a report on the demonstration pretrial service agencies. According to its authors the report is not an evaluation; it is an analysis of the data collected by the Administrative Office for its Fourth Report. It should be noted, however, that the methodology used in the design and execution of the analysis has been strongly criticized. For example, Dr. Michael Kirby found major flaws in the pre/post research design and groupings of data:

The authors chose to group sets of data for purposes of their own simplicity, when they have lost a great deal of information. It would be more valuable to delete the multitude of charts contained in this report, and present charts which are necessary to provide more reliable information. The major problematic groupings were: (1) the groupings of the times series into simple pre/post; (2) not presenting information on time series for individual districts to judge whether there were individual changes rather than aggregate changes; (3) not providing separate time series comparisons for trustee vs. comparison and probation vs. comparison.

Districts managed by Boards of Trustees and by probation officers were not divided into separate groups and compared with the comparison districts. The report included the following statement of conclusions:

Our conclusions are brief and come directly from the analysis. First, we find no statistically significant differences in changing detention rates between districts with pretrial services agencies and those chosen for comparison purposes. We found no differences in their pre-PSA to post-PSA change in failure to appear. We found a difference in their pre to post change in crime on bail, specifically PSA districts had fewer rearrests for felony offense than did comparison districts, although there was not a difference in their pre to post change in misdemeanor rearrests. These findings are particularly striking in view of the increased surveillance presumed to attach in the post-PSA period. It may be that supervision

support offsets the expectable increase from surveillance. We have no data to measure that possibility.

The comparison of districts managed by independent Board of Trustees with those managed by their Probation Officers is more complex. On the whole, board districts had more improvement in detention rates from pre-PSA to post-PSA periods than did probation districts. This is true for the basic pre/post comparison, and for the time-series analysis as well.

The General Accounting Office also reviewed the performance of the demonstration pretrial services agencies in a report issued in October 1978, "The Federal Bail Process Fosters Inequities" (Report No. GGD-78-105). The report included the recommendation that:

The Chief Justice, in his capacity as Chairman of the Judicial Conference, work with the Conference; the Director, Administrative Office of the U.S. Courts; and the Director, Federal Judicial Center, to develop and implement a program to assist judicial officers in making sound and consistent bail decisions. Such a program, at a minimum, needs to clarify the legitimate purposes of bail; present information and guidance on how the criteria listed in the Bail Reform Act relate to determining appropriate conditions of release; develop ways to promote greater use of secured appearance bonds rather than corporate surety bonds; and eliminate the practice of placing blanket restrictions on all defendants without regard to a defendant's danger of nonappearance.

We also recommend that the Judicial Conference provide the means for judicial officers to have more complete and accurate information on defendants in making bail decisions.

Expansion of Pretrial Services

On May 14, 1980, Senator Biden, along with Senators Kennedy, Mathias, and Thurmond introduced S. 2705, a bill to expand pretrial services beyond the existing ten demonstration districts.

On May 13, 1980, the Senate Judiciary Subcommittee on Criminal Justice held a hearing to review the performance of the ten demonstration districts and also to evaluate proposals to expand pretrial services. Witnesses included:

Judge Gerald B. Tjoflat, United States Fifth Circuit Court of Appeals, who serves as Chairman on the Committee on Administration of the Probation System of the U.S. Judicial Conference; Edward S. Northrop, Chief United States District Judge, and Joseph H. Young, United States District Judge, District of Maryland; representatives of the Pretrial Services Branch of the Administrative Office of the U.S. Courts; United States Attorneys; chief pretrial services officers and pretrial services officers from demonstration districts administered by the Probation Division and by Boards of Trustees; and Mr. Bruce Beaudin, Director of the D.C. Pretrial Services Agency.

The testimony at the hearing indicated strong support for the expansion of pretrial services. Typical of the testimony received by the Committee were the comments of Chief Judge Northrop:

The judicial offices of the Court have benefited greatly from having timely information provided for bail hearings, and

needless to say, the availability of detailed information has inured to the benefit of defendants appearing before the Court. Of course, my colleagues and I managed to carry out our responsibilities in bail matters prior to the introduction of pretrial services, but we are certainly far more satisfied now that the interests of the defendants, and of at least equal importance, the public interest, are being safeguarded to a maximum extent. All of the judges and magistrates have been able to release individuals who might otherwise have been confined for lack of adequate background data.

The benefits of having accused persons maintain their jobs, family and social relationships are immeasurable. Of corresponding significance is the dollar savings in jail costs. We are now in a period of economic flux and uncertainty in this country. Strenuous efforts are being made to reduce spending levels in all branches of Government. I submit that the pretrial agencies, whose continued existence depends on the favorable action of your Committee, have saved literally thousands of tax dollars which would otherwise have been spent on costs of incarceration.

Support for the expansion of pretrial services was not limited to the testimony received at the hearing.

For example, based upon the analysis contained in the Fourth Annual Report, the Administrative Office of the U.S. Courts made the following recommendation concerning the expansion and administration of pretrial services agencies:

On the basis of the favorable observations of judges, magistrates, and others, and the overall favorable statistical results of the program, it is recommended that statutory authority be granted to continue the pretrial services agencies permanently in the 10 demonstration districts, and further, that statutory authority be given for the expansion of the program to other district courts when the need for such services is shown. It is further recommended that the district courts be authorized to appoint pretrial services officers under standards to be prescribed by the Judicial Conference of the United States and that the Judicial Conference authorize, upon the recommendation of the Director of the Administrative Office and the recommendations of the district courts and judicial councils concerned which district courts should have pretrial services units. These units would be independent of the probation service, except in those districts in which the caseload would not warrant a separate unit.

In addition, the Judicial Conference of the United States "recommends continued funding and expansion of the pretrial services operation" (Resolution of the Judicial Conference of the United States formally adopted March 5, 1980 and reaffirmed March 19, 1981). The National District Attorneys' Association, the American Correctional Association, the National Association of Counties, and the National Advisory Commission on Criminal Justice, Standards and Goals have all recommended that mechanisms for providing pretrial services be established in all jurisdictions.

Moreover, the American Bar Association, through its Standards relating to the Administration of Criminal Justice, supports pretrial services because:

No matter how detailed and imaginative the conditions of release imposed pursuant to standard 1-52 may be, they are likely to be ineffective if the resources to enforce them are not provided. Unfortunately, however, many jurisdictions provide no meaningful supervision for defendants who are conditionally released prior to trial. It is hardly surprising that, without such supervision, the conditions are openly flouted and are ineffective in preventing either flight or recidivism. When these jurisdictions then suffer from a high rate of crime by defendants on pretrial release, political pressure builds for use of monetary conditions as a *sub rosa* preventive detention device or for denial of release altogether. In fact, however, pretrial detention is the most costly, least efficient means of dealing with the pretrial crime problem. If a small percentage of the funds necessary to operate jails in a constitutionally permissible fashion were instead allocated for adequate supervision of conditionally released defendants, there is every reason to believe that the pretrial crime and abscondence rates could be reduced to acceptable levels.

This standard is based on the hypothesis that it is unconscionable to resort to a more costly, less equitable system of pretrial incarceration without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible for a jurisdiction to release large numbers of criminal defendants pending trial without also taking reasonable steps to protect the community from released defendants who may pose a danger. *The standard therefore requires the establishment in every jurisdiction of a pretrial services agency or similar facility with overall responsibility for providing supervision for released defendants.* [Italic supplied.]

On July 30, 1980, the Senate Judiciary Committee ordered S. 2705, as amended, reported to the Senate. Subsequently, on September 30, 1980, S. 2705 passed the Senate without further amendment and was sent to the House of Representatives. The 96th Congress ended without the House taking final action on either S. 2705, or H.R. 7084, the House version of a pretrial services bill.

On April 8, 1981, Senators Biden and Mathias introduced the Pretrial Services Act of 1981 (S. 923), which was virtually identical to S. 2705 as passed by the Senate in 1980. S. 923 drew the additional support of the Federal Probation Officers' Association, which submitted a letter stating: "on behalf of the Federal Probation Officers' Association, this letter advises you that the Association supports S. 923 as pending before the Senate Judiciary." The Association also recommends that S. 923 be reported by the Committee "with no further amendments." (Letter by Robert B. Ault, President, Federal Probation Officers' Association, to Subcommittee on Crime [sic], May 14, 1980.)

SECTION-BY-SECTION ANALYSIS

Section 101. Section 101 provides that the bill may be cited as the "Pretrial Services Act of 1981".

Section 102. Section 3152 of title 18, United States Code, is amended to require that the Director of the Administrative Office of the United States Courts, under the supervision and direction of the Judicial Conference of the United States, establish pretrial services in each judicial district, other than the District of Columbia. The chief probation officer will supervise pretrial services, except in Special Districts created under section 103.

This section expands pretrial services from the 10 demonstration programs created under Title II of the Speedy Trial Act of 1974 to all federal judicial districts. Title II of the Speedy Trial Act of 1974 created 10 demonstration pretrial services agencies to meet two goals:

(1) To improve the efficiency and deterrence of the criminal justice system. More specifically, to reduce the likelihood that defendants released pretrial will commit a subsequent crime before trial commences;

(2) To reduce the number of released defendants who flee the jurisdiction.

The success of the demonstration programs proves that pretrial services are an effective means of meeting those goals. A program which reduces crime on bail and reduces the fugitive rate, while guaranteeing defendants their rights under the eighth amendment and the Bail Reform Act of 1966, should be available for defendants in every Federal district. The Committee rejects the argument that pretrial services should be provided only in districts with larger caseloads. An informed bail decision and supervised release are essential regardless of the size of a district's criminal caseload. The Pretrial Services Act of 1981 does not establish standard procedures for providing or administering pretrial services. The Committee recognizes the wide diversity among the 94 districts and the ability of some districts to use existing personnel to provide pretrial services. The Committee does not intend S. 923 to serve as a vehicle for creating new offices with new personnel when existing personnel and facilities are capable of providing satisfactory pretrial services. An analysis must be made of each district to determine whether necessary pretrial services can and should be provided by existing personnel or whether additional personnel is needed either because existing personnel is working at full capacity or for any other reason.

There may already be established in certain districts local agencies that provide similar services in state and local jurisdictions. The Committee urges the consideration of contracting with such agencies to provide those services in the Federal district.

Mr. William E. Foley, Director of the Administrative Office of the United States Courts, provided Senator Thurmond with the description of the Administrative Office's interpretation and proposed plan for implementation of the mandate that each district provide pretrial services in a way which will fulfill the intent of this legislation:

Each United States district court would have to preliminarily determine the question of how pretrial services could be

most economically, efficiently and effectively provided in its own judicial district. Its decision would have to be justified before the circuit judicial council, which would evaluate the question in accordance with standards approved by the Judicial Conference.

Senator Thurmond, I have personally listened to debates on the question of "separate units or part of probation" within the judiciary for several years. There is no answer other than "both", depending upon the caseloads, workloads burdens, individual administrative practices and other factors which prevail in each individual district. One approach will be best in one district, the other in a different district. That is precisely the rationale for the recommendations which were forwarded to Congress by the Conference in June of 1979.

Let me assure you that where caseloads do not require "a separate unit", or where administrative efficiency or operational expense factors indicate that pretrial services can best be provided through probation offices, that is how they will be provided. We do not want to spawn unnecessary "offices" or "units" or "entities," any more than you do. Later in this letter I specifically ask that you not statutorily require us to do so within the Administrative Office. The Conference does not wish to see that happen in the judicial districts either. The Conference framed its recommendations to provide enough administrative flexibility to insure that inefficient, inadequate, unnecessarily expensive means of providing pretrial services will not have to be incurred.

As Mr. Foley points out, the most important question is whether in each judicial district existing probation personnel is both adequate and appropriate to provide pretrial services. If it is determined that existing probation personnel is capable of performing pretrial services in some districts, the budget process by which the Administrative Office of the U.S. Courts determines the funding for all probation activities is necessarily the appropriate process for determining the most economical means of performing pretrial services through probation offices. In those districts in which existing resources are inappropriate or inadequate to provide pretrial services, S. 923, section 103, discussed below, authorizes a district to be designated a Special District in which a chief pretrial services officer who is not a probation officer will be provided necessary funds to administer pretrial services.

Section 103. Section 103 creates section 3152A of title 18, United States Code, which authorizes the Administrative Office of the U.S. Courts to establish pretrial services in certain Special Districts. The appropriate United States district court and the circuit judicial council must jointly recommend that a district be designated a Special District.

Pretrial services will be supervised by the chief probation officer in all districts except those districts which are designated Special Districts under this section. In a Special District, pretrial services will be supervised by a chief pretrial services officer who is not an individual also serving as a probation officer under the authority of 18 U.S.C. section 3654.

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The chief pretrial services officer will utilize existing probation personnel and facilities to the extent that they are appropriate and hire additional personnel only when need is shown. This ensures that pretrial services will be provided in each district without the creation of an unnecessary bureaucracy. Additional personnel will be funded under S. 923 only upon the recommendation of the circuit judicial council and the district court. Even then, the only additional personnel required by S. 923 is a chief pretrial services officer who is not a probation officer. That officer is encouraged to reduce bureaucracy by using personnel and resources already in the district.

Enclosed in this Report is the cost estimate prepared by the Congressional Budget Office, as required by Section 403 of the Congressional Budget Act of 1974. It is important to note that this estimate is based on the maximum potential cost of the proposed legislation and thus rests on the assumption that virtually all of the 94 federal judicial districts will opt for pretrial services under Section 3152A of the bill. However, the Administrative Office of the United States Courts has projected that the majority of districts will not seek designation as Special Districts, but rather would operate their pretrial services under the supervision of their chief probation officer. Specifically, the Administrative Office has projected that approximately 16 districts will opt in under the bill and based on this projection, the Administrative Office has estimated a recurring annual cost under the bill of less than \$6 million. Of course, the Committee recognizes that the figure cited by the Administrative Office is merely a projection, and that the actual figure could vary in either direction.

While the Committee takes no position on whether existing probation officers or chief pretrial services officers who are not probation officers are the best means of administering pretrial services in a particular district, substantial weight should be given to the recommendation of the Administrative Office of the United States Courts presented to Congress in June 1979 in the "Fourth Report on the Implementation of Title II of the Speedy Trial Act of 1974."

On the basis of the favorable observations of judges, magistrates, and others, and the overall favorable statistical results of the program, it is recommended that statutory authority be granted to continue the pretrial services agencies permanently in the 10 demonstration districts, and, further, that statutory authority be given for the expansion of the program to other district courts when the need for such services is shown. It is further recommended that the district courts be authorized to appoint pretrial services officers under standards to be prescribed by the Judicial Conference of the United States and that the Judicial Conference authorize, upon the recommendation of the Director of the Administrative Office and the recommendations of the district courts and judicial councils concerned which district courts should have pretrial services units. These units would be independent of probation service, except in those districts in which the caseload would not warrant a separate unit.

Section 3152A(b) provides that a chief pretrial services officers will supervise pretrial services in Special Districts. A panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district, or their designees selects the individual who will serve as chief pretrial services officers. It is the Committee's intent that the panel also have authority to appoint and dismiss the chief pretrial services officer. A favorable vote of at least two of the three members is necessary for the panel to exercise its authority. An individual who serves as a probation officer appointed under section 3654 of title 18, United States Code, is prohibited from also serving as chief pretrial services officer in Special Districts, designated under section 3152A. Although the bill does not specify qualifications for the position of chief pretrial services officer, the Committee recommends that the panel give special consideration to the suggestion of Mr. Bruce Beaudin, Director of the D.C. Pretrial Services Agency, that a lawyer brings particularly valuable skills to the position.

Section 104. Section 104 amends section 3153 of title 18, United States Code, to provide for the organization and administration of pretrial services in all districts. This includes districts in which pretrial services are supervised by a probation officer under section 102 of the bill, as well as districts in which pretrial services are supervised by chief pretrial services officers in Special Districts established under section 103 of the bill.

Subsection (a) authorizes the appointment of necessary personnel with the approval of the district court. In Special Districts, the panel responsible for the appointment of the chief pretrial services officer should be notified and consulted prior to any such appointment. The district court should give substantial weight to the views of the panel in determining whether to approve an appointment by the chief pretrial services officer. All personnel appointed may be removed at the direction of the chief pretrial services officer in Special Districts and the chief probation officer in all other districts at any time.

The Director of the Administrative Office of the U.S. Courts, with the approval of the Judicial Conference of the United States, is vested with the authority to determine position requirements and the rate of compensation of the chief probation officer, the chief pretrial services officer and other personnel. The maximum rate of compensation for the chief probation officer, chief pretrial services officer and other personnel appointed under this title cannot exceed the basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code, in effect during the term of such appointment.

Subsection (b) authorizes the chief pretrial services officer in Special Districts and the chief probation officer in all other districts to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The Director of the Administrative Office of the U.S. Courts will establish general policy governing such services and the approval of the District Court is required. The chief pretrial services officer and the chief probation officer should be given a great deal of discretion in exercising the appointing power. In Special Districts the district court should con-

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sult with the panel established under Section 103 if a question arises concerning the propriety of any appointment and give substantial weight to the views of the panel in determining whether or not to give approval.

Subsection (c) (1) establishes the general rule governing confidentiality of information contained in pretrial services files, presented in any pretrial services report or divulged by a pretrial services officer, probation officer or staff member during the course of any hearing. Such information should be confidential and only be used for a bail determination. The confidentiality rule is designed to promote candor and truthfulness by the defendant in bail interviews. The final pretrial services report must be made available to the attorney for the accused and the attorney for the government.

Subsection (c) (2) provides for exceptions to the general rule that pretrial services files should only be used for bail determinations. The Director of the Administrative Office of the U.S. Courts is required to issue regulations which will establish the policy governing release of such information. The regulations will specify all exceptions to the confidentiality rule, including authorizing release of information to: (A) qualified persons for research relating to the administration of justice provided that the anonymity of the individual to whom the information relates is preserved; (B) persons under contract for the operation of facilities for the custody or care of persons released on bail; (C) probation officers for the purpose of compiling presentence reports; (D) the attorney for the accused and the attorney for the government when the information is contained in a pretrial diversion report; (E) in certain limited cases to law enforcement agencies for law enforcement purposes. The regulations should require the completion of nondisclosure agreements by qualified persons and such additional requirements and conditions as the Director finds to be necessary to assure the protection of privacy and security interests.

Subsection (c) (3) provides that the information contained in pretrial services files, presented in any pretrial services reports, or divulged by a pretrial services officer or staff member during the course of any hearing is not, in general, admissible on the issue of guilt in any judicial proceeding. The only exceptions to this rule are that such information may be used in proceedings to determine guilt or penalties for failure to appear, or a violation of the conditions of release, in perjury proceedings, and for the purpose of impeachment in any subsequent proceeding.

Section 105. Section 3154 of title 18, United States Code, is reenacted and amended in subparagraphs (1), (4), and (9) and new subparagraph (12) is created to reflect the amendments made by S. 923.

Subsection 3154(5) of title 18, United States Code, is amended to require chief pretrial services officers and chief probation officers to inform the U.S. Attorney as well as the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody, or under its supervision.

Section 3154 of title 18, United States Code, is further amended to require pretrial services in every district to include two new functions. The functions are mandatory insofar as they must be performed by

pretrial services personnel and supervised by the chief pretrial services officer in Special Districts and the chief probation officer in all other districts unless there is no demonstrated need in a particular district.

First, each chief pretrial services officer in Special Districts and the chief probation officer in all other districts is directed to develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions and prepare periodic reports to assist in the improvement of the bail process. The Director of the Administrative Office of the U.S. Courts should provide direction to assist in performance of these functions and the panels established in Special Districts should insure that the court provide all necessary assistance. The Director of the Administrative Office of the U.S. Courts and panels established under section 103 also receive all reports in a timely fashion and monitor the manner in which this function is carried out.

Second, pretrial services officers are authorized to enter into and carry out pretrial diversion agreements with the U.S. Attorney. Each district is strongly urged to implement pretrial diversion to the greatest possible extent.

The value of pretrial diversion is well established. For example, in his testimony before the Subcommittee on Criminal Justice, Mr. James K. Robinson, United States Attorney (E.D. Michigan) described the highly effective and efficient program currently operating in Michigan:

Briefly the program operates as follows: When information is brought to the attention of an Assistant United States Attorney regarding a violation of federal criminal law the Assistant makes a preliminary determination as to whether the potential defendant should be considered as a candidate for pretrial diversion. This determination is made by reference to guidelines established by the Department of Justice modified by our office. If the Assistant determines that pretrial diversion is a possibility the matter is referred to pretrial services for a pretrial diversion investigation and report. In cases not meeting the guidelines, approval by a supervising Assistant United States Attorney is required prior to referring the matter for a pretrial diversion investigation. Pretrial Services conducts an investigation to determine whether a particular person is a suitable candidate for diversion. A written report is prepared and submitted to the Assistant United States Attorney who then determines whether pretrial diversion agreement is entered into between the United States Attorney's Office, the divertee and his or her attorney. The agreement can be tailored to the specific circumstances of the case. For example, restitution can be made a condition of diversion in cases involving theft or embezzlement. Usually the period of supervision is one year. If the person successfully completes the program, the United States Attorney's office declines criminal prosecution. If the person fails to comply with the terms of the pretrial diversion agreement formal criminal proceedings are considered.

We believe that pretrial diversion as currently administered is a valuable program which provides a workable alternative to criminal prosecution. The program provides qualified persons with an important second chance to avoid a federal criminal record. The success rate for persons participating in the program is high.

The Committee intends that all or any portion of the necessary services be contracted where appropriate. These services should include those specified in S. 923 and any additional necessary services such as counseling and housing.

Section 106. Section 106 amends section 3155 of title 18, United States Code, to require annual reports by the chief pretrial services officer in Special Districts, by the chief probation officer in all other districts and by the Director of the Administrative Office of the U.S. Courts. The chief pretrial services officer in Special Districts and the chief probation officer in all other districts must report to the Chief Judge of the district on the administration and operation of pretrial services within the district. The Chief Judge of the circuit and the magistrate or their designees who serve on the panel in Special Districts should also be provided with a copy of the report in a timely fashion. The annual report to the Judicial Conference of the United States by the Director of the Administrative Office of the U.S. Courts will include a report on the administration and operation of pretrial services for the previous year.

Section 107. Section 107 makes amendments to title 18, United States Code, to conform with the provisions of S. 923.

Section 108. Section 108 sets the effective dates for certain provisions of S. 923. Eighteen months after the enactment of S. 923, the Special Districts established under section 103 can begin full operation. During the 18 month interval, the court, the panel established under section 103, the circuit judicial council, and the Administrative Office of the U.S. Courts will evaluate the needs of the defendants in each district for pretrial services and evaluate whether existing personnel and facilities can adequately meet those needs. If the evaluation indicates that existing personnel is inadequate or inappropriate to provide pretrial services, the circuit judicial council together with the district court will recommend that the district be designated a Special District under section 103 and a chief pretrial services officer who is not a probation officer and other necessary personnel will be appointed. Special Districts may begin pretrial services at the end of the 18 month interval, and at anytime thereafter additional districts may be designated as Special Districts.

During the 18 month delay between the enactment of S. 923 and the establishment of Special Districts, the ten demonstration pretrial services agencies established under Title II of the Speedy Trial Act of 1974 will continue to operate. The district court and circuit judicial council may recommend that the demonstration districts be designated as Special Districts under section 103 and begin to operate as a Special District at the end of the 18 month interval. If a demonstration district is not designated a Special District the demonstration agency will cease to exist and remaining probation personnel within the district will perform pretrial services.

In those demonstration districts designated as Special Districts at the end of the 18 month period, every effort should be made to provide a smooth transition and continuity of services from the demonstration to the Special District program and, wherever possible and practical, personnel employed in the demonstration agency should be retained.

Section 109. Section 109(a) authorizes appropriation of funds for pretrial services on Special Districts established under section 103. When existing personnel provides pretrial services, funding should be by the procedures applicable to those personnel.

Subsection 109(b) authorizes appropriations of funds for the 10 demonstration pretrial services agencies to continue until the expiration of the 18 month interval between enactment of S. 923 and the establishment of pretrial services in Special Districts.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11 Rule XXVI of the Standing Rules of the Senate it is hereby stated that the Committee anticipates that the bill will have no additional direct regulatory impact. After due consideration, the Committee has determined that the changes in existing law contained in the bill will not increase or diminish any present regulatory responsibilities of the U.S. Department of Justice or of any other Department which exercises a law enforcement responsibility.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 21, 1981.

HON. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 923, the Pretrial Services Act of 1981.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 923.
2. Bill title: Pretrial Services Act of 1981.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, May 15, 1981.
4. Bill purpose: The bill amends Chapter 207 of Title 18, United States Code, by authorizing such sums as may be necessary for the Director of the Administrative Offices of the United States Courts to establish pretrial service programs in every judicial district except the District of Columbia. It also allows for the creation of pretrial services in special districts and outlines the organization, administration, and functions of pretrial services.

This amendment would become effective 18 months after the date of enactment of the bill. In the meantime, the bill extends, on a permanent basis, the ten pretrial services demonstration projects already in operation.

5. Cost estimate:

Estimated authorization level:

Fiscal year:	Millions
1982 -----	\$4.2
1983 -----	6.4
1984 -----	12.3
1985 -----	17.2
1986 -----	18.3

Estimated outlays:

Fiscal year:	
1982 -----	3.8
1983 -----	6.2
1984 -----	11.7
1985 -----	16.7
1986 -----	18.2

The costs of this bill fall within budget function 750.

6. Basis of estimate: This estimate assumes that the estimated authorization levels shown above will be appropriated. Based upon information available from the Administrative Office of the United States Courts, it is assumed that the pretrial services programs for all districts will become operational on a staggered basis: 12 districts will initiate their programs immediately after the end of the 18-month evaluation period (half-way through fiscal year 1983), another 30 programs will begin in fiscal year 1984, and 34 more districts will open their programs at the beginning of fiscal year 1985. Eight smaller districts are assumed to operate their pretrial services programs through their probation systems. Assumed staffing levels are also based on information available from the Administrative Office of the United States Courts.

The estimate of annual outlays are based on analyses of the composition of probable pretrial services programs. It is estimated that 90 percent of each year's authorization will be spent that same year, with the remainder spent the year after.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 15, 1981, CBO prepared a cost estimate on H.R. 3481, the Pretrial Services Act of 1981, for the House Committee on the Judiciary. That bill authorized \$6 million in fiscal year 1982 and \$8 million in fiscal year 1983 for the establishment of pretrial services in those judicial districts recommended by the United States District Courts and circuit judicial councils. It was estimated that that authorization level would provide sufficient funding for approximately 20 districts in fiscal year 1982 and approximately 25 districts in fiscal year 1983.

9. Estimate prepared by: Steve Martin.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with subsection (12) of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART II—CRIMINAL PROCEDURE

* * * * *

Chapter 207—Release

- 3141. Power of courts and magistrates.
- 3142. Surrender by bail.
- 3143. Additional bail.
- 3144. Cases removed from State courts
- 3145. Parties and witnesses—Rule.
- 3146. Release in noncapital cases prior to trial.
- 3147. Appeal from conditions of release.
- 3148. Release in capital cases or after conviction.
- 3149. Release of material witnesses.
- 3150. Penalties for failure to appear.
- 3151. Contempt.
- 3152. Establishment of Pretrial Services [Agencies] *in all districts*
- 3152A. *Establishment of pretrial services in special districts.*
- 3153. Organization and administration of pretrial services [agencies] *in all districts.*
- 3154. Functions and Powers of Pretrial Services Agencies.
- 3155. [Report to Congress] *Annual reports.*
- 3156. Definitions.

* * * * *

§ 3152. Establishment of pretrial services [agencies] *in all districts*

The Director of the Administrative Office of the United States Courts [shall establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.] (*hereinafter in this chapter referred to as the 'Director'*) shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise, to such extent and in such amounts as are provided in appropriation Acts, for the establishment of pretrial

services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer appointed pursuant to section 3152A of this title.

§ 3152A. Establishment of pretrial services in special districts

(a) *If an appropriate United States district court and the circuit judicial council jointly recommend the establishment of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.*

(b) *The pretrial services established under subsection (a) shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title.*

§ 3153. Organization of pretrial services agencies

[(a) The powers of five pretrial agencies shall be vested in the Division of Probation of the Administrative Office of the United States Courts. Such Division shall establish general policy for such agencies.

[(b) (1) the powers of each of the remaining five pretrial services agencies shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

[(2) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

[(A) one member, who shall be a United States district court judge;

[(B) one member, who shall be the United States attorney;

[(C) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

[(D) one member, who shall be the chief probation officer; and

[(E) two members who shall be representatives of community organizations.

[(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (C) (other than a public defender) and (E) of subsection (b) (2) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (C) (other than a public defender) or (E) of subsection (b) (2) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

[(d) (1) In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a Federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS-16 by section 5332 of title 5, United States Code.

[(2) In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b) (1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate prescribed for GS-15 by section 5332 of title 5, United States Code.

[(3) The designated probation officer or the chief pretrial service officer, subject to the general policy established by the Division of Probation or the Board of Trustees, respectively, shall be responsible for the direction, and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established under chapter 53 of title 5, United States Code.]

§ 3153. Organization and administration of pretrial services in all districts

(a) *With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152A of this title, or the chief probation officer in all other districts, shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer, the chief probation officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.*

(b) *The chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152A of this title, or the chief probation officer in all other districts, is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.*

(c) (1) *Except as provided in paragraph (2) of this subsection, information contained in pretrial services files, presented in any pretrial services report, or divulged by a pretrial services officer, a chief probation officer, or a staff member during the course of any hearing, shall be used only for the purposes of a bail determination and shall otherwise be confidential. The report shall be made available to the attorney for the accused and the attorney for the Government.*

(2) *The Director shall issue regulations establishing the policy for release of information contained in pretrial services files. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—*

(A) *by qualified persons for purposes of research related to the administration of criminal justice;*

(B) by persons under contract under section 3154(4) of this title;

(C) by probation officers for the purpose of compiling presentence reports;

(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

(3) Information contained in pretrial services files, presented in any pretrial services report, or divulged by a pretrial services officer, a chief probation officer, or a staff member during the course of any hearing, shall not be admissible on the issue of guilt in any judicial proceeding, except that such information may be used in proceedings to determine guilt or penalties for failure to appear or a violation of the conditions of release, in prejury proceedings, and for the purpose of impeachment in any subsequent proceeding.

§ 3154. Functions and powers of pretrial services agencies

Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

[(1) Collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person, but such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. In their respective districts, the Division of Probation or the Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to paragraph (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding, and in their respective districts, the Division of Probation or the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

[(2) Review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147.

[(3) Supervise persons released into its custody under this chapter.

[(4) With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney

General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services.

[(5) Inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.]

[(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.]

[(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.]

[(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.]

[(9) Perform such other functions as the court may, from time to time, assign.]

§ 3154. Functions and powers of pretrial services agencies

Pretrial services functions shall include the following:

(1) *Collect, verify, and report to the judicial officer prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, and recommend appropriate release conditions for each such individual.*

(2) *Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.*

(3) *Supervise persons released into its custody under this chapter.*

(4) *Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.*

(5) *Inform the court and the United States attorney of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.*

(6) *Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.*

(7) *Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.*

(8) *Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.*

(9) *Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.*

(10) *To the extent provided for in an agreement between a pretrial services officer in districts in which pretrial services are established pursuant to section 3152A of this title, or the chief probation officer in all other districts, or a staff member in his or her official capacity, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.*

(11) *Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.*

(12) *Perform such other functions as specified under this chapter.*

§ 3155. Report to the Congress

[(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies operated by the Division of Probation with those operated by Boards of Trustees and with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

[(b) On or before the expiration of the forty-eighth-month period following July 1, 1975, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.]

§ 3155. Annual reports

Each chief pretrial services officer in districts in which pretrial services are established pursuant to section 3152A of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28, United States Code, a report on the administration and operation of the pretrial services for the previous year.

PRETRIAL SERVICES ACT OF 1982

SEPTEMBER 8, 1982.—Ordered to be printed

Mr. HUGHES, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 923]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 923) to amend chapter 207 of title 18, United States Code, relating to pretrial services, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Pretrial Services Act of 1982".

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services

"(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer selected under subsection (c) of this section.

"(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States

district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

"(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title."

SEC. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services

"(a)(1) With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

"(2) The chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

"(b) The chief probation officer in all districts in which pretrial services are established under section 3152(a) of this title shall designate personnel appointed under chapter 231 of this title to perform pretrial services under this chapter.

"(c)(1) Except as provided in paragraph (2) of this subsection, information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of a bail determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information made confidential by paragraph (1) of this subsection. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information--

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(d) of this title;

"(C) by probation officers for the purpose of compiling presentence reports,

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information made confidential under paragraph (1) of this subsection is not admissible on the issue of guilt in a criminal judicial proceeding unless such proceeding is a prosecution for a crime committed in the course of obtaining pretrial release or a prosecution for failure to appear for the criminal judicial proceeding with respect to which pretrial services were provided."

SEC. 4. Section 3154 of title 18, United States Code, is amended to read as follows:

"§ 3154. Functions and powers relating to pretrial services

"Pretrial services functions shall include the following:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and recommend appropriate release conditions for such individual.

"(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3146(e) or section 3147 of this chapter.

"(3) Supervise persons released into its custody under this chapter.

"(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

"(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

"(10) To the extent provided for in an agreement between a chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

"(12) Perform such other functions as specified under this chapter."

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28 a report on the administration and operation of the pretrial services for the previous year."

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended by striking out the item relating to section 3152 and all that follows through the item relating to section 3155 and inserting in lieu thereof the following:

"3152. Establishment of pretrial services.

"3153. Organization and administration of pretrial services.

"3154. Functions and powers relating to pretrial services.

"3155. Annual reports."

SEC. 7. Section 604(a) of title 28, United States Code, is amended by—

(1) striking out "agencies" in paragraph (9);

(2) striking out "for pretrial services agencies" and inserting in lieu thereof "providing pretrial services" in paragraph (10);

(3) striking out "pretrial service agencies" in paragraph (11) and inserting "offices providing pretrial services" in lieu thereof; and

(4) striking out "pretrial services agencies" in paragraph (12) and inserting "offices providing pretrial services" in lieu thereof.

SEC. 8. During the period beginning on the date of enactment of this Act and ending eighteen months after the date of the enactment of this Act, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under chapter 207 of title 18 of the United States Code.

SEC. 9. (a) There are authorized to be appropriated, for the fiscal year ending September 30, 1984, and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the functions and powers of pretrial services established under section 3152(b) of title 18, United States Code.

(b) There are authorized to be appropriated for the fiscal year ending September 30, 1983, and the fiscal year ending September 30, 1984, such sums as may be necessary to carry out the functions and powers of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act.

And the House agree to the same.

PETER W. RODINO,
BILL HUGHES,
JOHN CONYERS,
ROBERT W. KASTENMEIER,
DAN GLICKMAN,
ROBERT MCCLORY,
HAROLD S. SAWYER,
HAMILTON FISH, Jr.,

Managers on the Part of the House.

STROM THURMOND,
CHARLES MCC. MATHIAS,
PAUL LAXALT,
JOSEPH R. BIDEN,
PATRICK J. LEAHY,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 923) to amend chapter 207 of title 18, United States Code, relating to pretrial services, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The Senate bill provides for the establishment of pretrial services in each judicial district. The House amendment provides for the establishment of pretrial services in those districts with respect to which the district court and the circuit council have so recommended.

The conference substitute adopts the Senate position.

The Senate bill provides that, for an 18-month period following enactment of the bill, any pretrial services beyond the existing demonstration districts—which are specifically authorized to continue their operation during the 18-month period—are to be provided under the supervision of the chief probation officers, utilizing existing resources, with no authority for additional appropriations. After this 18-month period, pretrial services may also be provided under the supervision of chief pretrial services officers, who must be individuals other than those serving as probation officers under the authority of section 3654 of title 18. When the district court and circuit council recommended the establishment of pretrial services in these special districts, authority is provided for additional appropriations to support pretrial services. The Senate bill also specifically authorizes appropriations necessary to continue the demonstration projects in effect prior to the date of enactment, for a period ending 18 months after the date of enactment.

The House amendment provides that, based on the recommendation of the district court and the circuit council, pretrial services may be provided under the supervision of either chief probation officers or chief pretrial services officers. There is no delay period in the availability of either type of pretrial services supervision, and the authority for appropriations extends to both types of management.

